80-1070

Supreme Court, U. S.
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No. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

JOINT PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where a state court divorce decree requires a serviceman to designate his children beneficiaries of his Servicemen's Group Life Insurance policy, and he subsequently designates another, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the SGLI proceeds to defeat the serviceman's designation?

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IN THE
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DONNA RIDGWAY AND
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA,
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY,
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY,
Respondents.

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF MAINE

The Petitioners, Donna Ridgway and The Prudential Insurance Company of America (Prudential), respectfully pray that a Writ of Certiorari issue to review the mandate of the Supreme Judicial Court of Maine entered in this proceeding on September 25, 1980, and the opinion of that Court entered September 26, 1980.

OPINION BELOW

The opinion of the Supreme Judicial Court of Maine appears at 419 A. 2d 1030. A copy of that opinion, and of the opinion of the Maine Superior Court Justice which it reversed, appear in the Appendix hereto.

JURISDICTION

The judgment of the Maine Supreme Judicial Court was entered on September 26, 1980, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Where a state court divorce decree requires a serviceman to designate his children beneficiaries of his Servicemen's Group Life Insurance policy, and he subsequently designates another, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the SGLI proceeds to defeat the serviceman's designation?

CONSTITUTIONAL PROVISION INVOLVED

. . . .

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and all the Judges in every State

shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

....

U. S. CONST., Art. VI.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The provisions of 38 U.S.C. §§717(a), 770, and 3101(a), and 38 C.F.R. §9.16 are set forth in the Appendix hereto.

STATEMENT OF THE CASE

Richard Ridgway, a career Army Sergeant, was insured under a Serviceman's Group Life Insurance (SGLI) policy for $20,000.00. Prior to his December 7, 1977, divorce from his first wife, April Ridgway, Sergeant Ridgway had designated her as the beneficiary of that policy. The divorce decree provided:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, Defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard married Donna Ridgway. On April 3, 1978, Richard changed the beneficiary designation on the SGLI policy to direct that the proceeds be paid as specified "by law" and therefore to his wife at the time of his death. *See* 38 U.S.C. §770(a); 38 C.F.R. §9.16. Following Sergeant Ridgway's death on January 5, 1979, both April Ridgway and Donna Ridgway filed claims under the policy.

Faced with the stated intention of the private insurance carrier to pay the policy proceeds to the second wife, Donna, April Ridgway then instituted an action on behalf of her three minor children against Prudential in the Superior Court of Maine for Androscoggin County. Donna Ridgway subsequently joined in the action voluntarily as a party Plaintiff. Following consolidation of a preliminary injunction hearing with a final hearing on the merits, the case was submitted to the trial court on stipulated

facts. The Supremacy Clause question presented here was specifically raised as an affirmative defense in the trial court by Answer of Petitioner Donna Ridgway, and fully briefed by all parties in the trial and appellate courts.

The Superior Court ruled that federal law gave the insured serviceman an absolute right to designate or change the beneficiary of his SGLI policy, and that the Supremacy Clause of the federal constitution accordingly required payment of the proceeds to Donna despite the contrary state court divorce decree requiring designation of the serviceman's minor children by his first marriage as the policy beneficiaries. The Superior Court specifically refused to consider imposition of a constructive trust on Donna, as sought by April Ridgway, holding that it was powerless to consider this remedy under the Supremacy Clause and the subject federal statute.

On appeal by April Ridgway on behalf of her children, the Maine Supreme Judicial Court reversed, holding that, by granting servicemen the absolute right to select their beneficiaries, 38 U.S.C. §770(a) did not embody a federal interest sufficient to constitute pre-emption; that the anti-attachment provision of 38 U.S.C. §770(g) did not apply to this case since the equitable interest claimed by Sergeant Ridgway's minor children did not amount to the claim of a "creditor;" and that the federal statute and regulations did not "prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children." 419 A.2d at 1033. The Maine court declared:

> In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decrees of our state courts.

419 A.2d at 1035.

REASONS FOR GRANTING THE WRIT

I. THE MAINE SUPREME COURT HELD THAT THE SERVICEMEN'S GROUP LIFE INSURANCE ACT DOES NOT PREVENT IMPOSITION OF A CONSTRUCTIVE

TRUST TO ENFORCE A STATE COURT DIVORCE DECREE, A QUESTION WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Where Congress makes federal insurance benefits available to individuals, to what extent can state law confer an interest in those benefits upon one other than their congressionally-intended recipient? The result under the Supremacy Clause depends on the nature of the federal interest involved together with evidence of congressional intent to pre-empt inconsistent state law, compared to the importance of the state interest asserted. The state-federal conflict becomes especially acute where, as in this case, the state interest involved is the financial support of its minor citizens following divorce, but the federal statute is enacted pursuant to congressional power over national defense and demonstrates an intent to pre-empt contrary state law. Although recent legislation and judicial decisions have narrowed the conflict between state court alimony and support decrees and federal benefit programs other than life insurance, the conflict between such decrees and the provisions of the Serviceman's Group Life Insurance Act and similar military insurance programs remains unresolved.

Since World War I, Congress has demonstrated a particular federal interest in granting those in the military service of the United States absolute control over proceeds of their servicemen's life insurance policies. Cases under each of the various acts establishing such coverage have ruled that no state law or order of any state court can restrict this absolute right. *E.g.*, *Wissner v. Wissner*, 338 U.S. 655 (1950) (National Service Life Insurance); *United States v. Williams*, 302 U.S. 46 (1937) (War Risk Insurance); *The Prudential Insurance Company of America v. King*, 453 F. 2d 925 (8th Cir. 1971) (Servicemen's Group Life Insurance). One question affecting the absolute nature of the serviceman's right to control disposition of his life insurance proceeds which has not yet been settled by this Court, however, is whether the insured's obligation of support under a divorce decree may override the apparent intent of Congress.

This Court's decision in *Wissner v. Wissner*, 338 U.S. 655 (1950), held that state community property law impermissibly conflicted with the National Service Life Insurance Act, the World War II era predecessor of the Servicemen's Group Life Insurance Act. The Court ruled that portions of the controlling statute giving servicemen the absolute right to designate their beneficiaries were a valid exercise

of the federal congressional power over national defense and displaced contrary state property law, and further held that the anti-attachment provisions of the Act preclude state courts from ordering a serviceman's designated beneficiary to pay over proceeds to the widow. In holding the asserted community property rights to be an insufficient basis for overruling the federal statutory provisions, the Court examined various state court decisions holding that provisions for exemption from attachment of the National Service Life Insurance Act and similar pensions and veterans' relief programs do not apply when alimony or support is in issue. However, the Court found those cases "irrelevant" to the particular issues before it and restricted its holding to pre-empt community property claims only. 338 U.S. at 660.

Some adjustment of the competing interests of recipients of other forms of federal benefits and their dependents following divorce was made in 1977, when Congress enacted new §459 of the Social Security Act, 42 U.S.C. §659, permitting attachment of certain benefits due from the United States or federal agencies to enforce alimony and child support obligations. The 1977 amendment was held in *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979), not to override the anti-attachment provisions of the Railroad Retirement Act[1] since the amendment defined alimony to exclude divisions of property between spouses. The provisions of the Railroad Retirement Act therefore pre-empted state community property law. The 1977 amendment was limited to moneys "the entitlement to which is based on remuneration for employment" and to funds "due from or payable by, the United States or the District of Columbia," and so has no effect on SGLI benefits, which are neither based on remuneration nor paid by the government.[2] As distinguished from the instant case, *Hisquierdo* is, like *Wissner*, a community property case, and has left unanswered the resolution of competing federal and state priorities where the state court order is premised on considerations of child support.

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[1]45 U.S.C. §231m.

[2]Although, unlike SGLI, NSLI benefits are paid by the government, presumably the 1977 amendment does not affect NSLI recipients since the proceeds are not based on remuneration. *See generally* Annot., 44 A.L.R. Fed. 494 (1979); Annot., 93 A.L.R. 3d 711 (1979).

The Servicemen's Group Life Insurance Act, enacted in 1965, differs from the predecessor National Life Service Insurance Act in that the federal government is not the insurer. Instead, the Veterans Administration is authorized to procure a group life insurance policy with a qualified primary commercial insurer authorized to do business in all 50 states. The commercial insurer administers the program under the supervision of the Veterans Administration. Section 659 resolves the question of accessibility of federally-administered wages or retirement benefits to enforce alimony or support obligations, and the decision in *Hisquierdo* reaffirms the rule of pre-emption applicable to the conflict between federal benefit statutes and community property rights, notwithstanding enactment of §659. However, the conflict between state court divorce decrees directing alimony and support, and federal life insurance programs such as SGLI, remains unresolved.

This conflict affects an enormous number of outstanding policies, the servicemen and veterans who own them, and their families—not only the 3,100,000 individuals insured under SGLI, but an additional 850,000 veterans insured under Veterans Group Life Insurance policies (38 U.S.C. §777), over 3,000,000 World War II and Korean veterans still insured under NSLI policies, and approximately 100,000 insured under USGLI policies.[3] With the national divorce rate nearing 50%, the number of servicemen, veterans, and dependents likely to be affected by this state-federal conflict is well into the millions.

The unsettled nature of this pre-emption question particularly affects spouses contemplating separation agreements, and state courts called on to provide for alimony and support by decree. If the ruling below stands, confusion will be created regarding whether entitlement to SGLI benefits may be contractually negotiated or judicially decreed notwithstanding the obvious Congressional intent to pre-empt any interference with the serviceman's absolute right to change beneficiaries. If reversed, support arrangements or decrees can be fashioned without interference with that right. Without a definitive ruling, neither parties negotiating a divorce settlement nor courts ordering support can know

[3]Source for SGLI and VGLI figures: The Prudential Insurance Company of America, administrator. Source for USGLI and NSLI figures: Office of Administrator of Veterans' Affairs.

whether a serviceman's beneficiary designation right is absolute, or whether SGLI benefits can be redirected by a contrary divorce decree.

Certainly there are in existence other divorce decrees which, like Sergeant Ridgway's, purport to direct or limit the serviceman's right to change beneficiaries. Reliance on such ill-founded decrees is imprudent in light of the precedents discussed here. The decision below serves only to encourage further such imprudent reliance on the anticipation that a party will be entitled to SGLI proceeds, which may unexpectedly be paid to others. Such an unfortunate result can be avoided only if this court definitively states that such reliance is misplaced.

In addition, the unsettled question raised here increases the already substantial administrative burden of managing these federally-chartered benefit programs. Under prior programs, some extrinsic evidence of an insured's intent in designating a beneficiary was permitted in unusual cases. With the advent of SGLI, Congress determined that absolute compliance with procedural requirements for designation of beneficiaries was necessary. The courts have recognized that the Congressional intent behind this unyielding standard was "to avoid thrusting upon the private insurance carriers undue administrative burdens." *Stribling v. United States*, 419 F. 2d 1350 (8th Cir. 1969). The regulations promulgated under the SGLI program emphasize the absolute finality of a properly executed beneficiary designation. 38 C.F.R. §9.16 (a)-(f). "Congress has determined that such regulations were necessary to make the SGLI program administratively feasible, and the Court is not in a position to question that wisdom." *Stration v. Servicemans Group Life Insurance Company*, 422 F. Supp. 1119, 1122 (D. Iowa 1976). As this Court has observed, divorce is becoming more frequent.[4] Private insurance companies and government agencies which manage federal military life insurance programs require resolution of the conflicting demands of state court decrees and federal legislation regarding any of these millions of policies where the insured may be divorced. Otherwise, these unresolved conflicts will produce continuing uncertainty for the insurance administrators and lead to litigation whenever the wishes of the insured conflict with a state court decree.

[4] *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 590 (1979).

Since its decision in *Wissner* 30 years ago, this Court has denied certiorari in four NSLI cases and one SGLI case. In none of these was the pre-emptive effect of either federal act permanently undermined. *Voelkel v. Tohulka*, 239 Ind. 588, 141 N.E.2d 344, *cert. den.* 355 U.S. 891 (1957), discussed later here, applied a constructive trust to effectuate the serviceman's intent, thus enhancing rather than restricting his rights under federal law. The Fifth Circuit in 1967 ruled that state law gave the guardian of an incompetent serviceman power to change his ward's beneficiary, turning to state law for a rule of decision where the federal act offered no guidance. *Roecker v. United States*, 379 F.2d 240 (5th Cir. 1967), *cert. den. sub nom. Tighe v. Roecker*, 389 U.S. 1005 (1967). In 1972, the Ninth Circuit held that the NSLI statute pre-empted a divorce decree purporting to divest the serviceman's ex-wife of any interest in his estate or any property owned by him. *Taylor v. United States*, 459 F.2d 1007 (9th Cir. 1972), *cert. den.* 409 U.S. 967 (1972). The California decision in *Milhan v. Milhan*, 13 Cal. App. 3d 129, 528 P.2d 1145 (1974), *cert. den.* 421 U.S. 976 (1975), threatened to undercut *Wissner* by giving a divorcing spouse an "offsetting" award of property to make up for the exclusion of service life insurance. That decision was disapproved by this Court last term in *Hisquierdo*, however. Another California case, this time under the SGLI statute, held that a divorcing serviceman did not demonstrate intent to change the beneficiary of his existing SGLI policy by naming his mother beneficiary on his application for conversion of the policy. *Hill v. Hill*, 23 Cal. App. 3d 760, 100 Cal.Rptr. 458 (1972), *cert. den.* 409 U.S. 1006 (1972).

Hill and *Voelkel* involved no real state-federal conflict. *Roecker* incorporated state guardianship law where federal law was silent. *Taylor* found the federal statute to pre-empt an inconsistent divorce decree, and the lower court's attempt in *Milhan* to circumvent pre-emption was curtailed by this Court in *Hisquierdo*. The Maine court's decision in this case is the first to hold squarely that federal law in this area does not pre-empt an inconsistent state decree, an error which Petitioners submit should be corrected by this Court.

At least two cases similar to this one are pending in lower courts at this writing. In *Nixon v. Prudential Insurance Co. of America*, (Circuit Court, 10th Judicial Circuit of Alabama, Docket No. CV-80-501-044), the court on October 2, 1980, entered an order

specifically staying further proceedings pending disposition of this petition. The Ninth Circuit also has pending an appeal from the District Court for the Northern District of California in *The Prudential Insurance Co. of America v. Johnson* (U.S. Dist. Ct., N.D. Cal., Docket No. C-79-2888). *Johnson*, unlike this case and *Nixon*, involves a claim to insurance proceeds based on community property law.

2. THE MAINE SUPREME COURT'S HOLDING THAT THE SERVICEMEN'S GROUP LIFE INSURANCE ACT DOES NOT PREVENT IMPOSITION OF A CONSTRUCTIVE TRUST CONFLICTS IN PRINCIPLE WITH DECISIONS OF OTHER STATE COURTS AND FEDERAL COURTS OF APPEALS.

Although the Servicemen's Group Life Insurance Act differs from the predecessor National Service Life Insurance Act in that the government is no longer the insurer, the provisions of each act conferring upon the serviceman an absolute right to designate and change beneficiaries are nearly identical. 38 U.S.C. §717(a) of NSLIA, like §770(a) of SGLIA, confers that right in express terms and provides for an order of preference of beneficiaries in the absence of an effective designation. The absolute nature of the serviceman's right to control the proceeds of his policy under each act is further guaranteed under anti-attachment provisions, 38 U.S.C. §3101(a) for NSLI, and §770(g) for SGLI.

Although no case from a state court of last resort or federal court of appeals has considered the impact of a state court divorce decree on the serviceman's rights under the newer SGLI form of policy,[5] cases decided under the nearly identical earlier statute clearly establish legislative intent to pre-empt any such interference. Cases decided to date under the new statute, while not reaching the divorce situation, have carried forward without exception the rule of pre-emption laid down in NSLI cases. The decision of the Maine Supreme Court in this case totally conflicts in principle with cases decided under the earlier statute (including

[5]In a district court case, *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970), imposition of a constructive trust on SGLI proceeds was sought, but was denied by the court without explanation.

those passing on enforceability of an inconsistent divorce decree), as well as those cases decided to date under SGLI. The decision below creates uncertainty by refusing to apply precedent established in NLSI cases to a familiar fact pattern when presented under the newer SGLI statute.

Relying on the right-to-designate provisions of 38 U.S.C. §717(a), the Ninth Circuit decided in *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), that a divorce decree requiring a husband to maintain his ex-wife as beneficiary under each of two NSLI policies impermissibly conflicted with the congressional intent to pre-empt such interference. The Court of Appeals for the District of Columbia concurred in *Suydam v. United States*, 404 F.2d 1329 (D. C. Cir. 1968), specifically rejecting a constructive trust theory like the one urged by Respondents here.

The Supreme Court of North Carolina reached a similar result even earlier in *Williams v. Williams*, 255 N.C. 315, 121 S.E. 2d 536 (1961), reasoning that a state court divorce decree preventing the insured from designating anyone other than his ex-wife amounted to a prohibited assignment under 38 U.S.C. §3101(a). In accord is *Fleming v. Smith*, 64 Wash. 2d 181, 390 P.2d 990, *aff'd* 69 Wash. 2d 277, 418 P.2d 147 (1966).

The rule of pre-emption sometimes works in favor of the former spouse. In *United States v. Donall*, 466 F.2d 1246 (6th Cir. 1972), although a Michigan statute and the serviceman's divorce decree both served to cut off his ex-wife's rights in any insurance policy, the Sixth Circuit ruled that the statutory beneficiary provisions of the NSLI policy pre-empted the inconsistent state law and decree, observing:

> It is well established that questions respecting the proper beneficiaries under NSLI policies are governed by federal law rather than state divorce law or state court divorce decrees.

466 F.2d at 1247. Accord: *Taylor v. United States*, 459 F.2d 1007 (9th Cir. 1972), *cert. den.* 409 U.S. 967 (1972). The Sixth Circuit had ruled previously in a case involving United States Government Life Insurance that an insured veteran retained the right to change beneficiaries following divorce, and that a contrary state court decree amounted to an assignment prohibited by 38 U.S.C. §3101(a). *Kimball v. United States*, 304 F.2d 864 (6th Cir. 1962).

The anti-assignment provisions of 38 U.S.C. §3101(a) have been extended to cases where an ex-spouse sues the insured's estate on a breach of contract theory, attempting to circumvent the many cases holding that an insured serviceman retains an absolute right to change beneficiaries. Texas and Idaho courts concur that a settlement agreement purporting to limit the insured's right to change beneficiaries following divorce is a prohibited assignment and so unenforceable even in an action for damages against the serviceman's estate. *McJunkin v. Estate of McJunkin*, 493 S.W. 2d 278, *error ref. n.r.e.* (Tex. Civ. App. 1973); *Harris v. Harris*, 487 P.2d 952 (Idaho 1971).

Although Respondents urged before the Maine Supreme Court various cases imposing constructive trusts on insurance benefits to effectuate a state court divorce decree, most of those cases involve merely private insurance policies or servicemen's policies converted to private policies, not within the constraint of 38 U.S.C. § 717(a), §770, or § 3101(a). Of the cases cited below, only *Voelkel v. Tohulka*, 239 Ind. 588, 141 N.E. 2d 344, *cert. den.* 355 U.S. 891 (1957), and *Burgess v. Murray*, 194 F.2d 131 (5th Cir. 1952), concerned NSLI policies. In each case a constructive trust was imposed, but only because it was necessary to implement, not defeat, the serviceman's freedom of choice regarding disposition of proceeds.

In *Voelkel*, the insured's sister refused to distribute policy proceeds among the decedent's siblings as she had agreed with him prior to his death. The Indiana court imposed a constructive trust, reasoning that nothing in the controlling statute "indicates that Congress desired to prevent the raising of a trust *where it is done to carry out the deceased soldier's intent.*" 141 N.E.2d 344, 346 (emphasis supplied). The Fifth Circuit ruled in *Burgess* that an insured serviceman's letter to his father requesting him to hold any proceeds for the benefit of the former's children was a manifestation of intent to change his beneficiary sufficient to control after death of the father. The court noted that "*the decree of the lower court was in accord with the desire of the insured.*" 194 F.2d 131, 132 (emphasis supplied).

Cases decided under SGLI have carried forward the rule of pre-emption. In one of the first cases decided under SGLI, a minor serviceman designated his fiancee beneficiary of his policy. The Supreme Court of Nebraska ruled that the federal statute preempted the serviceman's mother's claim, based on state law,

that her son's minority disabled him from making such a designation and that the policy proceeds should therefore pass to her as the beneficiary provided by statute in the absence of an effective designation.

> It is the contention of Plaintiff . . . that the state law governs while the Defendant contends that the decision rests solely on the federal acts of Congress . . . . We think that Serviceman's Group Life Insurance is a contract between the United States government and approved insurers for the benefit of the insureds, the same being those entering the military service of the United States. The designation of insurers by the federal government under regulations prescribed by the federal act amounts to a pre-emption of the field of servicemen's life insurance and it is therefore subject to the rules and regulations provided in the federal acts.

Johnson v. The Prudential Insurance Company of America, 182 Neb. 673, 156 N.W. 2d 812 (1968).

In *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), the Eighth Circuit ruled that a serviceman's effort to replace his wife with his mother as beneficiary by mailing a change of beneficiary form to his mother was ineffective since not received by the service involved, as required by 38 U.S.C. §770(a). This reasoning was applied to a divorce situation by a district court in *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970), since the divorce agreement requiring the insured serviceman to maintain his first wife as beneficiary was never submitted to the Air Force. A constructive trust theory was raised in an effort to circumvent the apparent requirements of §770(a), but denied.

In 1971, the Eighth Circuit adopted the Nebraska Supreme Court's reasoning in *Johnson*, supra, holding that an unmarried minor serviceman's mother had no claim under SGLI as the person to receive the proceeds in the absence of an effective designation of beneficiary, where her minor son had designated two friends. That court also ruled that the serviceman's use of a non-regulation form did not prevent his designation from being effective. *The Prudential Insurance Co. of America v. King*, 453 F.2d 925 (8th Cir. 1971).

In *Stratton v. Servicemen's Group Life Insurance Company*, 422 F. Supp. 1119 (D. Iowa 1976), the district court ruled on facts

almost identical to those in this case that the divorce decree could not divest the insured serviceman of his absolute right to change beneficiaries.

Against the clear background of these precedents, the opinion of the Maine Supreme Court below stands as an anomaly. It injects doubt into a substantively important area of law in which, until now, the result reached below would not reasonably have been predicted. The Maine court held that 38 U.S.C. §770(a) did not pre-empt inconsistent state court decrees, reading the legislative history of the Servicemen's Group Life Insurance Act to disclose only limited objectives—to make life insurance available to servicemen without war exclusion clauses, to make survivorship benefits available to parents of deceased servicemen without the necessity that the parents meet a "needs" test, and to permit servicemen to provide protection for other individuals without any showing of dependency. 419 A.2d at 1033. The Court failed to note, however, numerous indications in the legislative history that a primary purpose of the Act was to give the serviceman the right to select his beneficiary, and to change that beneficiary without consent of any prior beneficiary. 1965 U.S.Code Cong. & Ad. News 3232, 3236, 3240, 3241-42, 3243.

The Maine Supreme Court found the anti-attachment provisions of §770(g) inapplicable, holding that equitable claims of the minor children did not amount to a claim by "creditors," an exception never recognized in NSLI cases. A similar attempt by the ex-wife to distinguish herself from the class of creditors excluded by another federal anti-attachment provision was rejected by this Court in *Hisquierdo*. One critical difference between the anti-attachment statute involved in *Hisquierdo* and that here involved is that §231m of the Railroad Retirement Act at issue in *Hisquierdo* exempted federal pension benefits from "*legal* process," while 38 U.S.C. §770(g) extends to both legal and equitable claims. This distinction is important in light of this court's observation in *Hisquierdo* that judicial constructions permitting diversion of federal benefits for purposes of support were "a child of equity, not of law." The ruling by the Maine Supreme Court below that the federal statute and regulations "do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children," 419 A.2d at 1033, circumvents federal law in a manner prohibited by *Wissner* and *His-*

quierdo, using the constructive trust approach to pay lip service only to the statutory command and diverting the policy proceeds from the designated beneficiary immediately upon receipt.

Considering NSLI and SGLI cases as a group, based on the nearly identical statutory provisions involved, the decision below stands opposed in principle to decisions by the Sixth, Eighth, Ninth and District of Columbia Circuit Courts of Appeal, and the state courts of North Carolina, Washington, Texas, Idaho, and Nebraska. Particularly because an approved insurer under SGLI must be eligible to do business in all 50 states, 1965 U.S.Code Cong. & Ad. News 3232, 3234, the anomalous decision of the Maine Supreme Court in this case will create an extraordinary opportunity for forum shopping, allowing the ex-spouse to avoid the effect of all contrary precedents by filing suit in Maine.[6]

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Maine Supreme Judicial Court.

Respectfully submitted,

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[6]ME. REV. STAT. Ann. tit. 24-A, §421 requires an insurer qualified to do business in Maine to appoint the Maine Superintendent of Insurance its agent for service of process, thereby subjecting it to suit in Maine.

APPENDIX

A. DECISION OF MAINE SUPREME JUDICIAL COURT

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision No. 2416
Law Docket No. And-79-30

HAYLEY D. RIDGWAY, ET AL.
V.
PRUDENTIAL INSURANCE COMPANY OF AMERICA

Argued: March 17, 1980
Decided: September 26, 1980

Before McKUSICK, C.J., and GODFREY, NICHOLS, GLASSMAN, and ROBERTS, JJ.

GLASSMAN, J.

In this case, we are called upon to decide a very narrow but important issue: whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy in favor of a deceased serviceman's minor children when, contrary to a property settlement agreement and an express judicial decree, the serviceman failed to name the minor children as beneficiaries of that insurance.

Richard Ridgway, a career Army sergeant, was insured under a Servicemen's Group Life Insurance (SGLI) policy in the amount of $20,000. As of 1975, the designated beneficiary of this policy was the insured's wife, April Ridgway. On December 7, 1977, April was granted a divorce from Richard in the Superior Court, Androscoggin County. The divorce decree incorporated a property settlement agreement whereby Richard agreed to maintain for the benefit of his minor children the insurance policies on his life which he then owned. The divorce decree expressly commanded that he

> keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If

any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard married Donna Ridgway. Six days later, he changed the beneficiary designation on the SGLI policy, directing that the proceeds of the policy be paid as specified "by law." Under federal law, this designation was effective upon Richard's death to direct payment of the proceeds to his widow, Donna. *See* 38 U.S.C. § 770(a) (1976); 38 C.F.R. § 9.16 (1979). Richard died on January 5, 1979; both Donna, as the decedent's widow, and April, on behalf of her minor chidren, filed claims for the proceeds of the policy.

On April 13, 1979, April filed a complaint in the Superior Court, Androscoggin County, against The Prudential Insurance Company of America after the insurer had indicated that it intended to pay the proceeds of the SGLI policy to Donna. The complaint sought a declaration that pursuant to the divorce decree the minor children were entitled to the policy proceeds as well as both permanent and temporary injunctive relief to prevent Prudential from paying the proceeds to Donna. By stipulation, Donna subsequently joined the action as a party plaintiff, requesting that the insurance proceeds be paid to her. *See* M.R.Civ.P. 19(a). By leave of court, April then amended the complaint to designate the three children as parties plaintiff and herself as next friend. *See* M.R.Civ.P. 17(b). By further amendment and the filing of a cross-claim against Donna, April sought the imposition of a constructive trust for the benefit of her children on any proceeds of the policy paid to Donna and an order that in the event Donna was declared a constructive trustee Prudential pay the proceeds directly to the minor children. Following consolidation of the preliminary injunction hearing with a hearing on the merits, *see* M.R.Civ.P. 65(b) (2), the case was submitted on the basis of the stipulated facts.

The Superior Court ruled that federal law gave an insured serviceman an absolute right by statutorily prescribed means to designate or to change the beneficiary of an SGLI policy, and, therefore, under the supremacy clause of the federal constitution, U.S. Const. art. VI, cl. 2, the insurance proceeds must be paid to Donna despite the inconsistent decree ordering the insured to

designate the minor chidren as beneficiaries of the policy. On this ground, the Superior Court denied April's request for declaratory and injunctive relief in favor of the children based on rights granted in the divorce decree. The court also denied April's request for imposition of a constructive trust on the insurance proceeds and dismissed the cross-claim against Donna, reasoning that federal law would also prohibit equitable interference with Donna's right to the proceeds of the policy. Accordingly, the Superior Court ordered Prudential to pay the proceeds of the policy to Donna.

April has appealed on behalf of her minor children. By agreement of the parties, the insurance proceeds have been deposited with the Clerk of the Superior Court awaiting decision by this Court. Because of this agreement, any question as to the propriety of the Superior Court's denial of injunctive relief is moot. The only issue presented to us is whether the Superior Court was in error in declining to impose a constructive trust on the insurance proceeds for the benefit of the minor children. This issue is joined in April's cross-claim against Donna. We vacate the dismissal of the cross-claim.

Courts have commonly imposed a constructive trust on the proceeds of life insurance policies in the hands of a named beneficiary when the deceased has failed, contrary to the provisions of a property settlement agreement or a divorce decree, to name his divorced wife or his children by his divorced wife as the beneficiaries of the life insurance policies. *See, e.g., McKissick v. McKissick*, 93 Nev. 139, ____, 560 P.2d 1366, 1369 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, ____, 380 N.E.2d 189, 191, 408 N.Y.S.2d 359, ____ (1978); *Richards v. Richards*, 58 Wis.2d 290, ____, 206 N.W.2d 134, 138 (1973). Donna and Prudential contend that these cases have no application to Servicemen's Group Life Insurance because Congress has preempted the field and legislated as to how the proceeds of such policies are to be distributed. It is their contention that the supremacy clause of the federal constitution prohibits a state court from imposing a constructive trust on the proceeds of an SGLI policy.

Pursuant to its power over national defense, Congress has adopted legislation establishing the SGLI program. *Cf. Wissner v. Wissner*, 338 U.S. 655, 660-61 (1950). There can be no question that Congress has the power fully to preempt the field when legislating pursuant to one of the express powers granted to it in

the Constitution. If it has done so, the supremacy clause prohibits state action inconsistent with the congressional design. In the absence of an express preemption, it has been noted by an authority on consitutional law:

> The question whether federal law "preempts" state action, largely one of statutory construction, cannot be reduced to general formulas. In evaluating patterns of statutory interaction, the Supreme Court has declared generally that whether challenged state action has been preempted turns on whether or not it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." L. Tribe, *American Constitutional Law* 377 (1978), *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Thus, the issue in this case is whether the imposition of a constructive trust on the insurance proceeds in the hands of Donna for the benefit of Richard's minor children "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*

The Servicemen's Group Life Insurance Act (SGLIA), 38 U.S.C. §§ 765-76 (1976), was enacted by Congress in 1965. The SGLIA authorized the Administrator of Veterans' Affairs to purchase from commercial insurers a group life insurance policy which provides qualified servicemen automatic coverage in a maximum amount of $20,000. 38 U.S.C. §§ 766(a), 767(a) (1976). A uniform premium is deducted from the servicemen's pay, but each insured can in writing opt out of the program or reduce the amount of coverage. *Id.*, §§ 767(a), 769(a). The Administrator of Veterans' Affairs has been granted broad rule-making authority in supervising this military insurance program. *Id.*, § 210(c) (1).

Section 770(a) of the SGLIA establishes a statutory order of beneficiary preference. In pertinent part, this section provides:

> Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid . . . in the following order of precedence.
>
> First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . . ;

> Second, *if there be no beneficiary, to the widow or widower of such member or former member*; (emphasis added)
>
> Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation.... 38 U.S.C. § 770(a) (1976)

See also 38 C.F.R. § 9.16(i) (1979). Section 770(g) creates a statutory spendthrift provision:

> Payments of benefits due or to become due under Servicemen's Group Life Insurance... made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 770(g) (1976).

Pursuant to his rule-making authority, the Administrator has promulgated several regulations concerning the designation and change of beneficiaries of SGLI policies. An insured "may designate any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. § 9.16(a) (1979). "Any designation or change of beneficiary... will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service...." *Id.*, § 9.16(d). "A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." *Id.*, § 9.16(e). "No change or cancellation of beneficiary... in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section." *Id.*, § 9.16(f).

The objectives to be achieved by the enactment of the SGLIA were enumerated in a statement by W.J. Driver, Administrator of Veterans' Affairs, which is a part of the legislative history. *See* [1965] U.S. Code Cong. & Ad. News 3232, 3242-43. These objectives were: first, to make available to servicemen serving in a combat zone life insurance at standard rates and without war exclusion clauses; second, to make survivorship benefits available to non-dependent parents of deceased servicemen without the

necessity that the parents meet a "needs" test; and third, to permit servicemen to provide survivorship protection for individuals such as brothers and sisters without any showing of dependency. *Id.* In the limited circumstances which are here presented, the accomplishment of these objectives is neither obstructed nor interfered with by imposing a constructive trust on the insurance proceeds.

The statutory order of beneficiary preference established by Section 770(a) does not reflect any federal interest in permitting a serviceman to evade the responsibility to provide for his minor children imposed both by virtue of his voluntary agreement and by the express provision of a valid state court decree. Furthermore, the statutory spendthrift provision found in Section 770(g) has no application to the instant case since its purpose is to protect the proceeds of the insurance from the claims of creditors. We are concerned here not with the claim of a creditor but with the claims of minor children who assert an equitable interest in the proceeds arising from their deceased father's voluntary agreement and a valid judicial decree. Moreover, the promulgated regulations governing the designation and change of beneficiaries do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children.

Prudential and Donna assert that the statutory provisions reflect an intention by the Congress to assure ease of administration by the private insurance carriers. Nothing either in the language or in the legislative history of the SGLIA indicates that Congress at any time was concerned with the administrative convenience of the private insurance carriers.

Prudential and Donna also cite several judicial decisions which, they contend, establish that federal preemption precludes the imposition of a constructive trust in this case. We have carefully examined all those authorities and conclude that they are either distinguishable, not controlling, or both.

For example, in the case of *Wissner v. Wissner*, *supra*, the deceased serviceman had been insured under a National Service Life Insurance policy and had paid the premiums from his pay, which under the law of his domicile, California, was community property. The insured had named his mother as principal beneficiary and his father as contingent beneficiary. The insured's widow brought suit in a California court claiming entitlement to

one-half the proceeds of the insurance policy under the state's community property law. Reversing a judgment in favor of the wife, the United States Supreme Court held that the general statutory community property law of the state of California could not override the general statutory provisions governing National Service Life Insurance which gave the insured the right to designate his beneficiary. 338 U.S. at 658-59. The Court specifically noted that a different result might obtain in cases involving alimony and/or support, stating:

> [We] must note that the community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit. Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases. *Id.* at 660 (citation omitted).

In *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (1968), the mother of a deceased serviceman sought to recover the proceeds of an SGLI policy as against the designated beneficiary, the serviceman's fiancee, on the theory that under state law the serviceman invalidated his designation of beneficiary. The Nebraska court held that Congress, in authorizing a serviceman to designate the beneficiary of his SGLI policy, did not make any exception for minor servicemen and, therefore, the deceased's designation was controlling. *Id.* at ____, 156 N.W.2d at 814.

In *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), a divorce decree issued by a Washington court required a serviceman husband to designate, keep and maintain his wife as the sole beneficiary on his National Service Life Insurance policies. Contrary to this decree, the husband designated another beneficiary and upon his death his former wife sued the United States and the designated beneficiary to recover the proceeds of the insurance policies. The Ninth Circuit Court stated the issue before it as follows:

> Does a state court have the power to effectively require an *unwilling* veteran to maintain his former wife as beneficiary

on his National Service Life Insurance policies? *Id.* at 196 (emphasis added).

In reliance upon its interpretation of *Wissner v. Wissner*, *supra*, the court of appeals answered the question it had posed in the negative. It was able to characterize the serviceman in the *Hoffman* case as "unwilling" because he had not agreed to maintain his former wife as beneficiary. In the instant case, the serviceman had agreed with his former wife to keep his policies in force for the benefit of his children. Thus, the subsequently issued divorce decree did not require an "unwilling" serviceman to maintain his minor children as beneficiaries.

Other cases have involved merely the issue whether certain actions of the deceased serviceman were effective under the SGLIA to designate or change a beneficiary. In *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), the court construed the language of the SGLIA strictly, holding there had been no effective change of beneficiary since, as required by Section 770(a), the change of beneficiary form had not been received by the deceased's uniformed service prior to the serviceman's death. *Id.* at 1355. In *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971), the same court construed the SGLIA more liberally, holding that the serviceman had effectively designated his beneficiary since he had satisfied the two elements required for designation: the intent to designate a particular person as beneficiary and an overt act to effectuate that intent. *Id.* at 931. The court further dealt with an issue similar to that decided in *Johnson v. Prudential Insurance Company of America*, *supra*, namely that the serviceman's mother was not entitled to the proceeds of his SGLI policy on the theory, advanced under state law, that because the serviceman was a minor she had the sole right to his custody, control and services. *Id.*[1] In *Coomer v. United States*, 471 F.2d 1 (5th Cir. 1973), the

1. Relying on *Stribling* and *King*, a federal district court has held that a state judicial decree could not alter a serviceman's federal right to designate his children as beneficiaries. *Stratton v. Servicemen's Group Life Ins. Co.*, 422 F.Supp. 1119, 1121-22 (S.D. Iowa 1976). Although we do not disagree with that conclusion, we are concerned here with the authority of a state court to enforce its own decrees by imposing a constructive trust on the insurance proceeds received by the designated beneficiary under a federal statutory scheme containing no express prohibition.

father of a deceased serviceman brought an action to recover the proceeds of an SGLI policy which had been received by the serviceman's widow. The court held that the serviceman had effectively changed his beneficiary since he had filled out a beneficiary designation form provided by the personnel man in charge of records designating his father as his primary beneficiary and the form had been taken into possession by Navy personnel even though it had not been placed in the serviceman's file at the time of his death. *Id.* at 6.

None of the foregoing authorities prohibit the imposition of a constructive trust in favor of the deceased serviceman's minor children in the circumstances of this case. We cannot see how imposing a constructive trust to enforce a valid judicial decree implementing the serviceman's voluntary agreement to name his minor children as the beneficiaries of his SGLI policy can in any way frustrate or impede the accomplishment of any legitimate federal objective. Nor do we find anything in the literal language of the statute or in its legislative history which would prohibit such action. In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decrees of our state courts. Our conclusion not only preserves the integrity of the state judicial process but also provides some assurance that these minor children will not become a public charge. We are not persuaded that Congress intended any different result.

We therefore vacate the judgment dismissing the cross-claim and remand the case to the Superior Court with directions to issue an order imposing a constructive trust on the proceeds of the SGLI policy insuring the life of Richard Ridgway and, since by stipulation the proceeds have been deposited with the Clerk of Courts to be distributed in accordance with the mandate of this Court, directing the Clerk of the Superior Court to pay the proceeds to April Ridgway for and on behalf of her three minor children.

The entry is:

Judgment of the Superior Court dismissing the cross-claim vacated.

Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the

proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway.

In all other respects the judgment is affirmed.

Appellant awarded her costs.

B. MANDATE OF MAINE SUPREME JUDICIAL COURT

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court — LAW COURT DOCKET NO. AND-79-30

HAYLEY D. RIDGWAY, ET AL.
v.
PRUDENTIAL INSURANCE COMPANY OF AMERICA

MANDATE

The above-captioned cause having been brought before this Court, sitting as the Law Court, from the _____

Superior Court in the County of Androscoggin ; and it having been heard and maturely considered;

IT IS ORDERED that the Clerk of the Law Court enter upon the Law Court Docket and certify to the Clerk of the _____ Superior Court in the County of Androscoggin the following mandate therein: Judgment of the Superior Court dismissing the cross-claim vacated. Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway. In all other respects the judgment is affirmed. Appellant awarded her costs.

Dated: September 25, 1980

For the Court,

/s/ Harry P. Glassman

Justice

C. DECISION OF MAINE SUPERIOR COURT, ANDROSCOGGIN COUNTY

*(NOTE: The court several times in this decision and order refers incorrectly to Donna Ridgway as Donna Ridgway *Pinjani*. All references to the name Pinjani were deleted in a subsequent corrective order.)

STATE OF MAINE
ANDROSCOGGIN, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET No. CV-79-209

HAYLEY D. RIDGWAY et als, by their mother and next friend, APRIL D. RIDGWAY

and

DONNA RIDGWAY

Plaintiffs

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Defendant

DECISION AND ORDER

This case is before the court on the complaint of April Ridgway, as mother and next friend of Hayley D., Laurie R. and Brady L. Ridgway, for a declaration of rights regarding the payment of the proceeds of a life insurance policy on the life of their father, Sergeant Richard Ridgway. The complaint includes an application for a preliminary injunction enjoining the payment of the proceeds to the Plaintiff, Donna Ridgway (now Pinjani), the widow, and second wife, of Sergeant Ridgway. There is also a cross-claim against Donna Ridgway in Count Two of the amended complaint which seeks to make her a trustee under a constructive trust for the benefit of the minor children of any proceeds of the policy which might be paid to her. A Temporary Restraining Order enjoining the insurance company from paying the proceeds of the policy to the widow is in force. By stipulation, trial on the merits of the complaint has been consolidated with hearing on the application for a preliminary injunction pursuant to Rule 65 (b) (2) M.R.Civ.P.

For the reasons given below, the application for preliminary

and permanent injunction, the request for declaratory judgment in favor of the minor children, and the request for imposition of a constructive trust are all denied. The Temporary Restraining Order, granted on April 13, 1979, is dissolved, and the Defendant insurance company is ordered to pay the proceeds of the life insurance policy on the life of Sergeant Richard Ridgway to his widow, Donna Ridgway Pinjani.

The essential facts of the case are not in dispute and have been stipulated. Sergeant Richard D. Ridgway was at one time married to April Ridgway. The couple had three children, who are now the actual plaintiffs in this case. At all relevant times, Richard Ridgway was a member of the armed forces. On December 7, 1977, Sergeant Ridgway and April Ridgway were divorced. It is stipulated (unless barred by the parol evidence rule) that prior to the divorce, extensive negotiations regarding a property settlement were carried on. Included in these negotiations was discussion of a Servicemen's Group Life Insurance Policy (SGLI) on the life of Sergeant Ridgway, in the amount of $20,000.00, and on December 8, 1975, Sergeant Ridgway told April Ridgway that she was the beneficiary. The result of the negotiations with regard to this life insurance policy was included in the divorce decree as follows:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard Ridgway married the Plaintiff, Donna Ridgway. On April 3, 1978, Sergeant Ridgway directed that the proceeds of his SGLI policy be paid as specified "by law" which the parties agree directs the proceeds to be paid to Richard's widow, and second wife, Donna.

Sergeant Ridgway died on January 5, 1979. April Ridgway filed a claim under the policy, based on the divorce decree, and Donna Ridgway filed a claim, as widow, based on the above cited statute and April 3, 1978 designation of beneficiary. Following the filing of these claims, April Ridgway, on behalf of her children, filed a complaint against Defendant Prudential Life Insu-

rance Company, seeking a declaratory judgment that pursuant to the divorce decree, the children were entitled to the proceeds of the policy. She included in the complaint an application for a preliminary injunction enjoining payment to Donna Ridgway. She also requested a Temporary Restraining Order enjoining payment of the proceeds to Donna Ridgway, which was granted, without notice, on April 13, 1979. On June 8, 1979, April Ridgway, Prudential Life Insurance Company and Donna Ridgway, all joined in a motion to include Donna Ridgway as a party plaintiff pursuant to Rule 19 M.R.Civ.P. This motion was granted on June 21, 1979. On the same day, April Ridgway, on behalf of her children, filed a cross-claim against Donna Ridgway. By this cross-claim, she seeks to have the proceeds of the policy in the hands of Donna Ridgway subjected to a constructive trust for the benefit of the plaintiff children. A second count was added to the original complaint by a motion granted on July 23, 1979, which likewise requests that the funds be held by Donna Ridgway as constructive trustee to be paid directly to April Ridgway as next friend and guardian of her children.

Although this action is in the nature of an interpleader, the real contest is obviously between the two Plaintiffs. Defendant admits that it will have to pay the proceeds of the policy to someone but seeks judicial guidance as to the appropriate recipient. Unlike an interpleader, however, the Defendant has taken the position that Donna Ridgway, the properly designated beneficiary of the contract by virtue of 38 U.S.C. §770(a), is the proper party to receive payment. The issue presented by the amended complaint is whether or not April Ridgway's request for declaratory relief, injunctive relief, and a constructive trust is barred by virtue of the Supremacy Clause of the United States Constitution.

Discussion of Law

Between 1956 and 1965, persons in the military service were not covered by any life insurance under federal legislation unless they had retained government life insurance issued before April 25, 1951. In 1965, owing to the intensification of the Vietnam War, Congress enacted the Servicemen's Group Life Insurance Act. Originally, the Act allowed coverage up to a maximum amount of $10,000.00. The maximum coverage was enlarged in 1970 (P.L.

91-291) and again in 1974 (P.L. 93-289). The present day maximum coverage is $20,000.00. It is automatic for all persons on active duty for more than 30 days. However, the insured is given the opportunity of reducing the coverage to $15,000.00, $10,000.00, $5,000.00 or to cease participation in the program entirely. 38 U.S.C. §767.

The SGLI program is different from past military life insurance programs in that the government is not the insurer. Under SGLI, the Veteran's Administration is authorized to take out a group life insurance policy with a qualified primary commercial insurer. The program is administered by the commercial insurer under the supervision of the Veterans' Administration. 2 U.S. Code Cong. and Admin. News, p. 3317 (1974).

The Administrator of Veterans' Affairs is given the authority to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration." 38 U.S.C. §210 (c) (1). Pursuant to this authority, the Administrator has promulgated several regulations regarding the designation of beneficiaries in an SGLI policy. The insured is allowed to designate "any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. §9.16 (a). Further, "A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." 38 C.F.R.§9.16 (e).

It is clear that in passing the Servicemen's Group Life Insurance Act in 1965, Congress intended to pre-empt the field of military life insurance. *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971). The regulations propounded by the Administrator of Veterans' Affairs under the authority of Congress are consistent with the intent of the Act. Compare 38 C.F.R.§9.16 (a-f) with 2 U.S. Code Cong. and Admin. News, p. 3232 (1965). Therefore, any state law inconsistent with the federal statute or regulations is displaced by federal law by virtue of the Supremacy Clause of the United States Constitution. *U.S. v. Shimer*, 367 U.S. 374, 6 L.Ed.2d 908, 81 S.Ct. 1554 (1960).

38 U.S.C. §770, and the regulations promulgated thereunder, does more than provide a procedure for the designation of a beneficiary. The serviceman is given the absolute right to designate any person or legal entity as beneficiary of his life insurance policy. *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (Neb. 1968); *Stratton v. S.G.L.I.*,

422 F.Supp. 1119 (D.C. Iowa 1976). Since the divorce decree orders Sergeant Ridgway to designate a certain group of people as beneficiaries, the decree is inconsistent with the rights given him under federal law, and it must yield. Cf. *In re Marriage of Milhan*, 117 Cal. Rptr. 809, 528 P.2d 1145 (Cal. 1974), cert. denied, 421 U.S. 976. As a result, April Ridgway's request for a declaratory judgment in favor of the children, and her application for injunctive relief, based on the rights given in the divorce decree, must be denied.

The Plaintiff, April Ridgway, has also requested that a constructive trust be imposed on any proceeds of the policy paid to Donna Ridgway Pinjani. She argues that while the Defendant may have the absolute right to pay the proceeds to Donna Ridgway by virtue of federal law, federal law does not prevent the insured from making a binding contract for the disposition of the proceeds. She also contends that federal law in no way prevents the court from enforcing such an obligation with a constructive trust for the benefit of her children.

Many courts have held that when a party to a divorce agrees to designate the other party as beneficiary of any life insurance contracts, and such agreement becomes a part of the decree, the beneficiary of the agreement has an equitable right to those proceeds. If such an agreement is violated by the insured subsequently changing the beneficiary designation, a constructive trust is often the remedy granted by the court. *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E.2d 189 (N.Y. 1978). However, the Simonds case, and all cases so holding, are distinguishable from this case in that they do not involve federal law.

April Ridgway's contention that federal law does not prevent a constructive trust in this situation is without merit. Federal regulations, in addition to giving the insured the right to designate anyone as a beneficiary at any time, also provide that any designation made will be effective only if it is in writing signed by the insured, and received by the uniform service involved before the death of the insured. 38 C.F.R. §9.16 (d) and (f). These regulations are to be strictly construed, *Stribling v. U.S.*, 419 F.2d 1350 (8th Cir. 1969). Here, it is undisputed that the divorce decree was never received by the proper office. Therefore, it has no effect on the designation of a beneficiary. Moreover, it is undisputed that, following his marriage to Donna Ridgway, the insured filed a

proper form in the proper office to change the beneficiary. Because of the absolute right given the insured to change the beneficiary of the policy at any time by proper filing, this filing, subsequent to the divorce decree, would have changed the beneficiary even if the decree had been properly filed. Therefore, it is clear that federal law gives Donna Ridgway a legal right to the proceeds of this insurance policy. The equitable power of the court cannot interfere with this positive federal law by imposing a constructive trust. See *Weymann v. Wilson*, 320 F.Supp. 980 (Fla. 1970).

April Ridgway is correct in saying federal law does not prevent the insured from making a binding agreement for disposition of the proceeds of an SGLI policy. The agreement embodied in the divorce decree is valid, and it would appear to give her a cause of action, on behalf of her children, against the estate of her former husband. *Stratton v. S.G.L.I., supra.* The Supremacy Clause requires that the federal statute override the court's equitable power to enforce such an agreement with a constructive trust. Accordingly, the entry must be:

> The Plaintiff, April Ridgway's, request on behalf of her minor children, for a declaratory judgment and for injunctive relief against the Defendant, Prudential Life Insurance Company, is *DENIED*. The Temporary Restraining Order issued on April 13, 1979, is *DISSOLVED*. The Plaintiff, April Ridgway's, request for imposition of a constructive trust is *DENIED*. The Defendant, Prudential Insurance Company, is *ORDERED* to pay the proceeds of the insurance policy on the life of the late Richard Ridgway to his widow, Donna Ridgway Pinjani.

Dated: September 14, 1979 /s/ Louis Scolnik

Louis Scolnik
Justice, Superior Court

D. STATUTES—38 U.S.C

38 U.S.C. §717(a): Insurance maturing on or after August 1, 1946.—The insured shall have the right to designate the beneficiary or beneficiaries of insurance maturing on or after August 1, 1946, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.

38 U.S.C. §770: Beneficiaries—Payment of insurance—(a) Any amount of insurance under this sub-chapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veteran's Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death.

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if

such person had predecesed the member or former member, and any such payment shall be a bar to recovery by any other person.

(c) If, within two years after the death of the member or former member, no claim for payment has been filed by any person entitled under the order of precedence set forth in this section, and neither the Administrator nor the administrative office established by the insurance company or companies pursuant to section 766(b) of this title has received any notice that any such claim will be made, payment may be made to a claimant as may in the judgment of the Administrator be equitably entitled thereto, and such payment shall be a bar to recovery by any other person. If, within four years after the death of the member or former member, payment has not been made pursuant to this section and no claim for payment by any person entitled under this section is pending, the amount payable shall escheat to the credit of the revolving fund referred to in section 769(d).

(d) The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal monthly installments.

(e) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his uniformed service under prior provisions of law will be effective with respect to the increased insurance authorized under the Veterans' Insurance Act of 1974 and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance heretofore in effect.

(f) Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall

not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

38 U.S.C. §3101(a): Nonassignability and exempt status of benefits.—Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

§9.16 Beneficiaries and options.

(a) A member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary.

(b) Any designation of beneficiary or election of optional settlement made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect, until properly changed by the member or automatically canceled, under the following rules:

(1) If the insurance terminates following separation or release from all duty in a uniformed service.

(2) If the member enters on duty in another uniformed service.

(3) If the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

(c) If the member acquires Veterans' Group Life Insurance effective on the day following termination of his or her Servicemen's Group Life Insurance, any beneficiary designation in effect from the Servicemen's Group Life Insurance shall be considered a designation of beneficiary for Veterans' Group Life Insurance but not for more than 60 days after the effective date of the Veterans' Group Life Insurance, unless at the end of the 60-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than 5 years after the effective date of such insurance.

(d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty under § 9.5(a) or § 9.7 (a) or (b), or for coverage under § 9.1(a)(3) or made at any time and without the knowledge or consent of the previous beneficiary.

(f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(g) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his or her uniformed service in effect on May 24, 1974, will be effective with respect to the increased amount of insurance authorized on May 24, 1974, by Pub. L. 93-289 (88 Sta. 165) and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance theretofore in effect.

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under § 9.5(a) or § 9.7 (a) or (b) after termination of duty and waives coverage or elects coverage in the amount of $15,000, $10,000 or $5,000, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(i) The insurance proceeds will be paid to the person or persons surviving the insured member in the following order of precedence:

(1) To the beneficiary or beneficiaries designated (see paragraph (d) of this section).

(2) If there be no such beneficiary, to the widow or widower. Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer;

(3) If none of the above, to the child or children and descendants of deceased children by representation;

(4) If none of the above, to the parents or the survivor of them;

(5) If none of the above, to the executor or administrator of the estate of the insured; or

(6) If none of the above, to other next of kin in accordance with the laws of the State wherein the insured member was domiciled at date of death.

(j) The insured member may elect in writing that settlement of the insurance proceeds be made either in a lump sum or in 36 equal monthly installments. If no election is made or the member elects that payment be made in a lump sum, the beneficiary may elect at the time of the member's death either mode of settlement.

An election to be effective must be received before the member's death by the appropriate office as specified in paragraph (d) of this section.

§ 9.17 Taxation and exemption.

Section 770(g), title 38, United States Code provides that payment of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (a) collection of amounts not deducted from the member's pay, or collected from the member by the Secretary concerned under 38 U.S.C. 769 (a), (b) levy under subchapter D, chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (c) the taxation of any property purchased in part or wholly out of such payments.

§ 9.20 Assignments

Servicemen's Group Life Insurance, Veterans' Group Life Insurance and benefits thereunder are not assignable.

No. 80-1070

Office-Supreme Court, U.S.
FILED
MAR 7 1981
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY,
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

JOINT PETITIONERS' SUPPLEMENTAL BRIEF

Peter M. Garcia
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Donna Ridgway

Stephen P. Beale
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Lewiston, ME 04240
Tel.: (207) 784-1371
Counsel for Petitioner
The Prudential Insurance
Company of America

February 23, 1981

SUPPLEMENTAL BRIEF

Since December 18, 1980, the date of the last filing by the joint Petitioners for Writ of Certiorari, a new case has been filed which is hereby brought to the Court's attention pursuant to Rule 22.6. At Pages 9 and 10 of the Joint Petition for Writ of Certiorari, Petitioners directed the Court's attention to two cases similar to the one at bar which are pending in lower courts, one stayed pending disposition of this Petition for Writ of Certiorari.

On December 26, 1980, counsel for Petitioners were informed that a case with facts virtually identical to this case has been filed in the United States District Court for the Northern District of Florida. It is *Burks v. Prudential and the United States,* P.C.A. No. 80-0560. In that case, the divorced former wife of a serviceman insured under SGLI has brought an action against Prudential and the Department of the Air Force. She seeks to enforce a State court divorce decree which required the serviceman to designate and maintain his children as beneficiaries of his SGLI policy, notwithstanding his subsequent designation of another beneficiary (his new wife).

This filing substantiates Petitioners' contention that litigation over competing state and federally-based claims will continually arise over SGLI policies in the divorce context, and further illustrates the need for a clear-cut ruling from this Court on the issue.

Respectfully submitted,

Peter M. Garcia, Esq.
377 Main Street
Lewiston, Maine 04240
Counsel for Petitioner Donna Ridgway

Stephen P. Beale, Esq.
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Counsel for Petitioner The Prudential Insurance Company of America

No. 80-1070

Office-Supreme Court, U.S.
FILED
MAY 26 1981
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SUPREME COURT OF THE UNITED STATES

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BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

JOINT APPENDIX

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Counsel for Respondents

Filed December 23, 1980

Certiorari
granted March 9, 1981

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Docket Entries, Superior Court for Androscoggin County

Date Filed April 13, 1979
ANDROSCOGGIN County Docket No. CV-79-209

Action DECLARATORY JUDGMENT AND INJUNCTION

APRIL D. RIDGWAY, in her capacity as next friend of HAYLEY DAWN, LAURIE ROBIN, and BRADY LEIGH RIDGWAY	vs.	PRUDENTIAL INSURANCE COMPANY OF AMERICA,

17 Beacon Avenue
Auburn, Maine and
Donna Ridgway
(Party Plaintiff)

Plaintiff's Attorney	Defendant's Attorney
Curtis Webber	Stephen Beale
LINNELL, CHOATE & WEBBER	SKELTON, TAINTOR & ABBOTT
83 Pleasant St.	465 Main Street
Auburn, Maine 04210	Lewiston, Maine 04240
	Peter Garcia
	ORESTIS & GARCIA
	377 Main Street
Date of Entry	Lewiston, Maine 04240
	(For: Donna Ridgway)

1979	
April 13:	Complaint seeking Declaratory Judgment and Injunction filed.
April 13:	Plaintiff's Request for Temporary Restraining Order filed.
April 13:	Affidavit of Curtis Webber filed.
April 13:	Exhibits A, B, & C, (attached to complaint), filed.
April 13:	Temporary Restraining Order without Notice filed. (Delahanty J.) COURT ORDERS that defendant and all persons in its behalf be, and they hereby are, res-

trained from paying out the proceeds of a certain insurance policy issued on the life of Richard H. Ridgway more fully described in the verified complaint pending further order of the Court and that plaintiff's prayer for a preliminary injunction be and it hereby is set down for hearing before this Court at the Androscoggin County Courthouse, Turner Street, Auburn, Maine on April 23, 1979 at 9:30 o'clock A.M.

This temporary restraint is ordered without requiring that security be furnished pursuant to M.R.C.P. Rule 65(c) for the following good cause: This order will not subject defendant to pecuniary loss since it has no personal claim to the funds in question and upon the representation of counsel that defendant's representatives have indicated to him that defendant would not object to a judicial resolution of the dispute over entitlement to the insurance proceeds in question.

April 16: Copies of Temporary Restraining Order without Notice mailed to Curtis Webber and Winfred S. Gideon, Director - Office of Servicemen's Group Life Insurance this day.

April 23: Hearing on Preliminary Injunction set for this day. No hearing held. Continued by agreement of counsel to May 29, 1979 at 9:30 a.m.

April 25: Summons, filed. Defendant, Prudential Insurance Company served on April 17, 1979.

April 30: Plaintiff's Motion for Continuance of hearing on Preliminary Injunction, filed. Seen and agreed to.

May 1: Plaintiff's Motion for Continuance of hearing, granted, (McCarthy J.) case to be reset.

May 1: Copies of Plaintiff and Defendant's Motion for Continuance mailed to counsel, C. Webber and S. Beale, this day.

May 29: Correspondence from S. Beale, RE: This case was to be set for hearing on the May 29, 1979 but was inadvertently not placed on the list therefore this is a confirmation that it is to be rescheduled for June 26, 1979 at 1:30 p.m. and is allotted One to one and one half hours of time, filed.

June 8: Defendant's Answer, filed.

June 19: Joint Motion to Add Party Plaintiff, M.R.C.P. 19, filed.

June 21: Joint Motion to Add Party Plaintiff, granted. (Silsby J.)

June 21: Plaintiff's Motion for Continuance, filed and granted. (Silsby J.) Without Objection.

June 21: Plaintiff's Motion to Amend Complaint and Cross-Claim, filed. Notice of Motion for July 9, 1979 at 9:30 a.m., filed. Certificate of Service, filed. Cross-claim, filed. (Exhibit A) Divorce Judgment, filed. (Exhibit A) Summons, filed.

June 22: Copies of Joint Motion to Add Party Plaintiff and of Plaintiff's Motion for Continuance mailed to counsel, C. Webber and S. Beale, this day.

June 25: Written notice mailed to counsel, C. Webber and S. Beale, RE: Plaintiff's Motin to Amend Complaint and Cross-Claim set for July 23, 1979 at 9:30 a.m. rather than the noticed July 29, 1979

June 28: Correspondence from C. Webber, RE: Hearing on merits, filed.

June 29: Answer to Complaint of Plaintiff Donna Ridgway, filed.

July 2: Defendant's Motion for Consolidation M.R.C.P 65 (b) (2), filed. Seen and agreed to.

July 3: Defendant's Motion to Dismiss Count II of Plain-

tiff April D. Ridgway's Amended Complaint, filed. Request for hearing for August 13, 1979 at 1:30 p.m. filed.

July 12: Correspondence from P. Garcia, RE: Entering his appearance on behalf of Donna Ridgway, filed.

July 23: Hearing held on Plaintiff's Motion to Amend Complaint and Cross-Claim. (Scolnik, J. Presiding, James Trudeau Reporter)
Motion granted. Complaint and cross-claim amended as prayed.

July 24: Copies mailed Stephen Beale and G. Curtis Webber.

August 13: Hearings held on Preliminary and Permanent Injunction, Motion for Consolidation, and motions to Dismiss, (Scolnik J.) Court takes matters under advisement.

August 20: Copy of Reply Memorandum of Plaintiff Donna Ridgway, filed.

August 20: Memorandum of Defendant, The Prudential Insurance Company of America, filed.

August 20: Defendant's Answer to Count II of Amended Complaint of Hayley Ridgway et al, filed.

August 13: Stipulation, filed. (marked as Plaintiff's Exhibit #2)

August 13: Answer and Defenses of Donna Ridgway to Complaint of Hayley D. Ridgway et al., amended, filed.

August 13: Trial Memorandum of Plaintiff, Donna Ridgway, filed.

August 17: Reply Brief of Plaintiffs Hayley Ridgway, et al, filed.

August 24: Reply to Point II of Donna Ridgway's Reply

Memorandum, filed. (in letter form)

Sept. 17: Reply Memorandum of Plaintiff, Donna Ridgway, filed.

Sept. 17: Plaintiff's Memorandum of Law, filed.

Sept. 17: Decision and Order, filed. (Scolnik J.)

Sept. 17: JUDGMENT: The Plaintiff, April Ridgway's request on behalf of her minor children, for a declaratory judgment and for injunctive relief against the Defendant. Prudential Life Insurance Company, is *DENIED*. The Temporary Restraining Order issued on April 13, 1979, is *DISSOLVED*. The Plaintiff, April Ridgway's request for imposition of a constructive trust is *DENIED*. The Defendant, Prudential Insurance Company, is *ORDERED* to pay the proceeds of the insurance policy on the life of the late Richard Ridgway to his widow, Donna Ridgway Pinjani.

Sept. 18: Copies of Decision and Order mailed to counsel, C. Webber, P. Garcia and S. Beale, this day.

Sept. 21: Amendment to Decision and Order, filed. (Scolnik J.)

Court orders all references to Donna Ridgway Pinjani are changed to read Donna Ridgway.

Sept. 24: Copies of Amendment to Decision and Order mailed to counsel, C. Webber, P. Garcia and S. Beale.

Sept. 26: Plaintiff's Notice of Appeal to the Law Court from the judgment of this Court issued on September 14, 1979, filed.

Sept. 28: Copy of Plaintiff's Notice of Appeal mailed to S. Beale and P. Garcia, this day.

Sept. 28: Copy of Plaintiff's Notice of Appeal and Superior Court Docket entries mailed to James Chute, Clerk, Law Court, this day.

Oct. 5: Certificate regarding transcript and designation of issues on appeal, filed.

Oct. 12: Further Amendment to Decision and Order, filed. (Scolnik J.)

Court orders the Decision and Order of this Court dated September 14, 1979 as previously amended is further amended as follows:

On the final page of the Order, the entry of Judgment is amended by striking out the period after the words "constructive trust is *DENIED*." and adding the words: "and her cross claim is *DISMISSED*."

Oct. 12: Copies of Further Amendment to Decision and Order Mailed to counsel, P. Garcia, S. Beale, C. Webber and copy to James Chute, Clerk of the Law Court, this day.

Oct. 22: Plaintiffs' Notice of Appeal to the Law Court from the Decision and Order of the Superior Court dated September 14, 1979 as amended on September 20, and October 11th, filed.

Oct. 24: Attested copy of Plaintiff's Notice of Appeal and of the Superior Court docket entries mailed to James Chute, Clerk of the Law Court, this day.

Oct. 24: Attested copy of Notice of Appeal mailed to counsel, P. Garcia and Stephen Beale, this day.

Oct. 29: Copy of Stipulation, filed.

Oct. 31: Original Stipulation that was sent to the Law Court received and filed this day.

Nov. 7:	Correspondence from C. Webber, RE: No transcript needed filed.
Nov. 8:	L-A-W
Nov. 8:	Entire file along with an attested copy of Superior Court docket entries trasmitted to the Law Court, this day. First class mail.
Nov. 8:	Counsel, C. Webber, S. Beale and P. Garcia notified this day of transmittal of record to the Law Court.
1980	
June 25:	Certificate of Deposit issued on 12/21/79 having reached its maturity as of this day, principal $21,109.60, plus interest on certificate $1,263.00, totalling $22,372.60 transferred to a regular savings account #03-670-520-0 per instructions of Attorney Peter Garcia. Copy of above docket entries mailed G. Curtis Webber, Peter Garcia and Stephen Beale.

Docket Entries, Maine Supreme Judicial Court

SUPREME JUDICIAL COURT DOCKET NO. And-79-30
SITTING AS THE LAW COURT

COUNTY Androscoggin

ON APPEAL BY Plaintiffs

Hayley Dawn Ridgway, Laurie Robin Ridgway and Brady Leigh Ridgway by their mother and next friend, April D. Ridgway and Donna Ridgway	vs.	Prudential Insurance Company Of America

ATTY. FOR PLTF.

Curtis Webber, Esq. (orally)
Linnell, Choate & Webber
83 Pleasant Street
Auburn, Maine 04210

ATTY. FOR DEFT.

Stephen P. Beale, Esq. (orally)
Skelton, Taintor & Abbott
465 Main Street
Lewiston, Maine 04240

Peter Garcia (orally)
Orestis & Garcia
377 Main Street
Lewiston, Maine 04240
(for Donna Ridgway) (Appellee)

Nov. 9, 1979	Original record filed.
Dec. 19, 1979	Stipulation filed extending time to file the Appellants' brief to December 24, 1979.
Dec. 26, 1979	Appellants' brief and appendix filed.
Jan. 21, 1980	Stipulation filed extending time to file the Appellee's brief to January 28, 1980.
Jan. 28, 1980	Brief filed by Defendant-Appellee, The Prudential Insurance Company of America.
Jan. 29, 1980	Stipulation filed extending time to file the

	brief of Appellee Donna Ridgway to February 4, 1980.
Feb. 5, 1980	Stipulation filed extending time to file the brief of Appellee Donna Ridgway to February 11, 1980.
Feb. 5, 1980	Brief filed by Plaintiff-Appellee Donna Ridgway.
Feb. 22, 1980	Stipulation for enlargement of time to file Reply brief filed. Time enlarged to 2/28/80
Mar. 6, 1980	Reply brief filed by Plaintiffs-appellants.
Mar. 10, 1980	Completed stipulation filed enlarging time to file the reply brief to March 6, 1980. Original stipulation filed February 29, 1980.
Mar. 14, 1980	Certificate of service filed by Curtis Webber, Esq.
Mar. 17, 1980	Case argued. Wernick, J. did not sit. (off)
Sept. 26, 1980	Mandate filed. "Judgment of the Superior Court dismissing the cross-claim vacated. Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Serviceman's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway. In all other respects the judgment is affirmed. Appellant awarded her costs." Glassman, J.

Oct. 6, 1980	Verified bill of costs filed.
Oct. 9, 1980	Certificate of costs issued. Original to clerk and copies to counsel.
Oct. 10, 1980	Mandate issued to Clerk of Superior Court.
Mar. 12, 1981	Order allowing certiorari filed. The petiton herein for a writ of certiorari to the Supreme Judicial Court of Maine is granted.

Verified Complaint dated April 13, 1979,
with attached Exhibits A, B and C

1. Plaintiff is the mother of Hayley Dawn, Laurie Robin and Brady Leigh Ridgway, minor children of herself and Richard H. Ridgway.

2. Plaintiff and Richard H. Ridgway were divorced on December 7, 1977. A copy of said divorce decree is annexed hereto as exhibit A.

3. At the time of the divorce, Richard H. Ridgway, who was then a Sergeant in the U. S. Army, had in force a $20,000 insurance policy on his life with the defendant insurance company. The policy number was Group Insurance Contract G-32000.

4. Although directed by the divorce judgment to do so, Sergeant Ridgway did not make his children the beneficiaries of said life insurance and instead, directed that the insurance proceeds be paid as specified "by law". Sergeant Ridgway is now deceased.

5. Defendant insurance company has advised that it interprets the designation "by law" as requiring it to pay the policy proceeds to Donna Ridgway of Huntsville, Alabama, whom Sergeant Ridgway married subsequent to his divorce from April D. Ridgway.

6. Unless injunctive relief is granted to prevent it from doing so, defendant has indicated that it will pay out the policy proceeds. See letter from Winfred S. Gideon 3rd attached hereto as exhibit B.

7. The minor children on whose behalf this suit is being brought will be irreparably injured by such payment and have no adequate remedy at law to prevent it.

8. A case or controversy is presented as to the correct interpretation of the insurance policy in question since defendant interprets the policy and applicable law as requiring it to pay over the

policy proceeds to Donna Ridgway. See letter of Winfred S. Gideon, 3rd attached hereto as exhibit C.

WHEREFORE plaintiff requests a judgment declaring that the minor children of April D. and Richard H. Ridgway are entitled to receive the aforesaid life insurance proceeds and permanently enjoining defendant, and all persons acting in its behalf from paying said proceeds to Donna Ridgway or any other person.

PRAYER FOR PRELIMINARY INJUNCTION

Plaintiff further prays that a preliminary injunction issue enjoining defendant and all persons acting on its behalf from paying out the life insurance proceeds in question pending final order of this Court. The grounds of this motion are that:

(1) Unless restrained, defendant will pay out the insurance proceeds in question to Donna Ridgway.

(2) Donna and Richard H. Ridgway had substantial indebtedness, but Richard's estate was insolvent so that if the insurance proceeds are paid out as aforesaid, there is a substantial likelihood that they will be used to pay debts of the estate or debts of Donna Ridgway so that any judgment later rendered in favor of the minor children on whose behalf this suit is being brought would be uncollectible.

(3) Granting the preliminary injunction prayed for will cause no pecuniary loss to defendant since it is merely the stakeholder of the insurance proceeds and has no financial interest in the outcome of these proceedings.

EXHIBIT A

STATE OF MAINE
ANDROSCOGGIN, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 75-29

APRIL D. RIDGWAY,

Plaintiff

v.

RICHARD D. RIDGWAY,

Defendant

DIVORCE JUDGMENT

Notice of the pendency of the complaint in this cause of divorce has been duly and seasonably given according to law. This cause was heard before me and the allegations and the evidence were fully presented and considered. A divorce from the bonds of matrimony is hereby ordered and adjudged to this plaintiff from this defendant for the cause of cruel and abusive treatment.

It is further ordered that the care and custody of the parties' three children be awarded to the plaintiff with reasonable rights of visitation to the defendant. Defendant is ordered to pay for the support of the children the sum of $75 per month per child beginning January 1, 1978. The support payments shall be increased to $80 per month per child effective August 1, 1979. Effective August 1, 1980, the support payments shall increase to $90 per month per child unless defendant did not receive a cost of living increase in his pay between August 1, 1979 and August 1, 1980 in which case said $10 increase in support payments shall not be effective until such time subsequent to August 1, 1980 as defendant does receive a cost of living increase.

In addition to regular support payments, defendant shall pay to the plaintiff the sum of $100 each quarter, the first payment to be received on or before March 1, 1978, to be used for the purchase of clothing for the parties' children.

Defendant shall be responsible for all medical, dental, and optical expense attributable to the parties' three children. Such bills shall be sent directly to the defendant for payment where possible. In cases where plaintiff is required to pay for such services in cash, she shall furnish the defendant with a receipt for such payment which shall promptly be reimbursed. To the extent feasible, plaintiff will seek medical, optical and dental care and will process claims for the same in a manner so that they will be payable under defendant's serviceman's insurance.

Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

It is further ordered that the parties shall retain possession of the household furnishings and other items presently in their possession. Defendant shall assume sole responsibility for payment of loans and any other outstanding indebtedness incurred by the parties for family obligations prior to the time of their separation.

Defendant shall be entitled to claim one of the parties' three children as a tax exemption for federal and state income tax purposes for the calendar year 1977. Defendant shall be entitled to claim two of the parties' children as exemptions for the calendar year 1978.

Defendant is ordered to pay to plaintiff's attorney the sum of $1,000 as a partial payment for legal services rendered in connection with this divorce proceeding and all motions for support and arrearage in connection therewith including a motion which is presently under advisement. This order supersedes a previous order of this Court regarding counsel fees issued July 30, 1976. Said sum due as counsel fees shall be paid at the rate of $50.00 per month, first payment to be due on or before January 1, 1978.

Finally, defendant is ordered to assume outstanding loans of $156 and $160 from his mother to the plaintiff. This order renders

moot a requested contempt order seeking payment of arrearage and attorney's fees which was taken under advisement by Judge Violette after hearing held on October 24, 1977.

Dated December 7, 1977

s/William E. McCarthy
Superior Court Justice

EXHIBIT B

March 15, 1979

Mr. Curtis Webber
Linnell, Choate & Webber, Attorneys at Law
P.O. Box 190
83 Pleasant Street
Auburn, Maine 04210

Re: Richard H. Ridgeway
Soc. Sec. No.: 321-38-1413

Dear Mr. Webber:

This will supplement our telephone conversation on Tuesday.

As Rita Ridgway is contesting payment of the Servicemen's Group Life Insurance proceeds to Donna, based on the divorce judgement that the deceased was to maintain his children as the beneficiaries we have marked our file to that effect.

Unless legal action is commenced against us within 30 days from the date of this letter, we shall pay Donna Ridgway.

If you intend to sue us, it will be helpful for you to know that this insurance is provided by Group Insurance Contract G-32000

issued by the Prudential Insurance Company of America to the Administrator of Veterans Affairs. Prudential would be the proper party to the lawsuit. It is licensed to do business in the District of Columbia and all 50 states. Service of process may be obtained upon Prudential through your State Department of Insurance or by service on any Prudential Office.

Sincerely,

s/Winfred S. Gideon, 3rd

Winfred S. Gideon 3rd
Director OSGLI

WSG:MA
nb

EXHIBIT C

March 13, 1979.

Mr. Curtis Webber
Linnell, Choate & Webber
Attorneys at Law
P.O. Box 190
83 Pleasant Street
Auburn, Maine 04210

Soc. Sec. No.: 321 38 1413
In Re: Richard H. Ridgway

Dear Mr. Webber:

This is to acknowledge receipt of your letter dated February 16, 1979.

The administration of the Servicemen's Group Life Insurance Program is governed by Federal Law (Title 38, U.S.C.A. Section 765 et seq.). A copy of Public Law 89-214 is attached for your review. Please refer to Section 770 (A) which lists the Order of Precedence for this insurance.

The Branch of Service which maintains the insurance records of its personnel certified to this office that the deceased was insured for $20,000.00 and he elected payment of the Servicemen's Group Life Insurance proceeds to devolve "By Law" in the Order of Precedence as set forth in Section 770 (A) of Public Law 89-214.

Since the insured elected on April 3, 1978 to have his Servicemen's Group Life Insurance proceeds devolve "By Law", it appears we are bound to pay the insurance proceeds in accordance with Title 38, U.S. code section 770 (A) notwithstanding the divorce judgement incorporating a separation agreement whereby he was to maintain his children as the beneficiaries.

Also, as the deceased and Donna were not divorced prior to the insured's death on January 5, 1979, she was his legal spouse at death and entitled to receive the insurance proceeds.

We are sorry our reply could not have been more favorable.

Sincerely,

s/Winfred S. Gideon, 3rd

Winfred S. Gideon, 3rd
Director, OSGLI

WSG:MA
pm

Plaintiff's Request for Temporary Restraining Order dated April 13, 1979, together with attached Affidavit

Plaintiff moves for a temporary restraining order restraining defendant and all persons acting in its behalf from paying out the proceeds of a certain life insurance policy issued by it on the life of Sergeant Richard H. Ridgway more fully described in the verified complaint on the ground that immediate and irreparable injury will otherwise result to the minor children on whose behalf this suit is being brought before a hearing can be had on plaintiff's motion for a preliminary injunction for the reasons set forth in the verified complaint and the affidavit of Curtis Webber attached to this motion.

AFFIDAVIT

I, Curtis Webber, hereby state under oath as follows: In my capacity as attorney for plaintiff and her minor children, I have spoken by telephone with representatives of defendant Prudential Insurance Company of America concerning the disputed proceeds of a life insurance policy issued on the life of Richard H. Ridgway, now deceased. The representatives of the Company indicated that unless legal action was initiated within 30 days of written notification, it would pay out the proceeds in question to Donna Ridgway. These representatives indicated that the Company would have no objection to the bringing of such an action and would welcome a judicial resolution of the dispute. They provided me with the correct legal name of the company for purposes of such a proceeding and advised that the Company could be served with process through the State Insurance Commissioner's Office. Prudential Insurance Company is not presently represented by an attorney with regard to this matter.

Temporary Restraining Order issued by Justice Delahanty on April 13, 1979

This matter came on for hearing this date on plaintiff's verified complaint, affidavit of Curtis Webber, and motion for temporary restraining order and, it appearing to the Court that immediate and irreparable injury to the minor children represented by the plaintiff is likely to occur before notice can be served and a hearing had thereon in that defendant has stated that it would pay out the disputed life insurance proceeds to another person within 30 days after notice which period will expire April 18, 1979, April 17th being generally observed as a holiday, and it further appearing that there is a reasonable likelihood that plaintiff will prevail on the merits of the action presented by her verified complaint, it is hereby

ORDERED that defendant and all persons in its behalf be, and they hereby are, restrained from paying out the proceeds of a certain insurance policy issued on the life of Richard H. Ridgway more fully described in the verified complaint pending further order of the Court and that plaintiff's prayer for a preliminary injunction be and it hereby is set down for hearing before this Court at the Androscoggin County Courthouse, Turner Street, Auburn, Maine on April 23, 1979 at 9:30 o'clock A.M.

This temporary restraint is ordered without requiring that security be furnished pursuant to M.R.C.P. Rule 65(c) for the following good cause: This order will not subject defendant to pecuniary loss since it has no personal claim to the funds in question and upon the representation of counsel that defendant's representatives have indicated to him that defendant would not object to a judicial resolution of the dispute over entitlement to the insurance proceeds in question.

Issued at 3.00 o'clock P.M.
this 13th day of April, 1979

s/Thomas E. Delahanty

Associate Justice, Supreme Judicial Court acting as Superior Court Judge

Summons dated April 13, 1979, bearing sheriff's return dated April 17, 1979

TO THE ABOVE-NAMED DEFENDANT:

The Plaintiff April D. Ridgway, in her capacity has begun a lawsuit against you in this Court. If you wish to oppose this lawsuit, you or your attorney must prepare and file a written Answer to the attached Complaint with 20 _____days from the day this summons was served upon you. You or your attorney must file your Answer by delivering it in person or by mail to the office of the Clerk of the Superior Court, Androscoggin County Courthouse, Auburn, Maine. On or before the day you file your Answer, you or your attorney must mail a copy of your Answer to the Plaintiff's attorney, whose name and address appear below.

IMPORTANT WARNING: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU FILE YOUR ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR EMPLOYER MAY BE ORDERED TO PAY PART OF YOUR WAGES TO THE PLAINTIFF OR YOUR PERSONAL PROPERTY, INCLUDING BANK ACCOUNTS, AND YOUR REAL ESTATE MAY BE TAKEN TO SATISFY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS LAWSUIT, *DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.*

If you believe the Plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the office of the Clerk of Superior Courts, at the Androscoggin County Courthouse or any other County Courthouse, for information as to places where you may seek legal assistance.

DATED: April 13, 1979

s/Marian Kelleher

Clerk of Courts

(*Seal of Court*)

Curtis Webber, Esq.
Linnell, Choate & Webber
Name of Plaintiff's Attorney
83 Pleasant St., Aub., ME 04210
Address
784-4563
Telephone

Served on April 17, 1979
Date
Richard W. Craw
Deputy Sheriff

State of Maine
BUREAU OF INSURANCE
Augusta, Maine 04330

On the 17th day of April, 1979 at 1:55 P.M. (EST) the within copy of Civil Summons and Complaint Seeking Declaratory Judgment and Injunction for April D. Ridgway, in her capacity as next friend of Hayley Dawn, Laurie Robin, and Brady Leigh Ridgway vs. PRUDENTIAL INSURANCE COMPANY OF AMERICA was served upon me in hand by Richard Craw, Deputy Sheriff in and for the County of Kennebec, State of Maine.

s/Theodore S. Briggs
First Deputy Superintendent

Defendant Prudential's Answer to Complaint, dated June 8, 1979

NOW COMES Defendant Prudential Insurance Company of America and answers the complaint of Plaintiff April D. Ridgway as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the complaint, and accordingly denies the same.

2. The allegations of Paragraphs 2 through 6 and 8 of the complaint are admitted.

3. The allegations of Paragraph 7 are denied.

WHEREFORE, Defendant Prudential Insurance Company of America prays that this Court enter its judgment declaring that the proceeds of the subject life insurance policy are to be paid to Donna Ridgway, as named in Paragaraph 5 of Plaintiff's complaint, and for such other and further relief as may be just and proper.

Joint Motion to Add Donna Ridgway as Party Plaintiff dated June 8, 1979

Plaintiff April D. Ridgway and Prudential Insurance Company of America, through their attorneys, and Donna Ridgway, pro se, move and stipulate that said Donna Ridgway be joined in this action as Party Plaintiff, with the same force and effect as though she had been a named Plaintiff in the original summons and complaint herein at the time of commencement of this action; and as and for a cause of action in behalf of the said Donna Ridgway, that all of the allegations contained in the April 13, 1979, complaint of Plaintiff April D. Ridgway be deemed set forth at length as that of Plaintiff Donna Ridgway, except that the allegations of paragraphs 1 and 7 and prayer for preliminary injunction thereof be deemed deleted, and that instead said complaint be deemed to demand on behalf of said Donna Ridgway payment of the policy proceeds to her to the exclusion of Plaintiff April D. Ridgway; and further that the name of said Donna Ridgway be added to the summons and complaint and all further pleadings herein, and further that the Defendant Prudential Insurance Company of America file an Answer admitting or denying the allegations of the April 13, 1979 complaint of Plaintiff April D. Ridgway, as deemed to be the complaint of Plaintiff Donna Ridgway, with the exceptions above noted.

Order dated June 21, 1979, granting Motion to Add Party Plaintiff

Motion granted. s/ H. T. Silsby, J.

Motion to Amend Complaint by substituting Hayley D. Ridgway et al as named Plaintiffs and by adding Count II to Complaint; Motion to Add Cross-Claim against Co-Plaintiff Donna Ridgway; dated June 20, 1979

Plaintiff April D. Ridgway moves to amend her complaint and her cross claim by redesignating the parties plaintiff as "Hayley Dawn Ridgway, Laurie Robin Ridgway, and Brady Leigh Ridgway by their mother and next friend, April D. Ridgway" and further moves to amend her complaint against defendant Prudential Insurance Company of America by designating paragaraphs 1 through 8 as Count I and adding a second count as follows:

COUNT II

1. Plaintiff realleges by reference the allegations contained in Count I of the complaint.

2. Plaintiff has filed a cross claim against Donna Ridgway, widow of Richard D. Ridgway, alleging that Donna Ridgway stands in the position of constructive trustee as to any portion of the proceeds of the life insurance of Richard H. Ridgway which should be paid to her and demanding judgment ordering that said insurance proceeds be paid to April D. Ridgway as next friend and natural guardian of the three minor children. A copy of the cross claim is attached hereto as exhibit A.

WHEREFORE, in the event that judgment is granted on the cross claim declaring that Donna Ridgway stands in the position of constructive trustee as to said insurance proceeds, plaintiff requests that defendant be ordered to pay said proceeds directly to her in her capacity as next friend and natural guardian of the

three minor children for their exclusive benefit and that her receipt shall fully discharge the obligation of the defendant company under the insurance policy.

Exhibit A
CROSS CLAIM

1. Plaintiff April D. Ridgway in her capacity as next friend of her three children (hereinafter referred to simply as plaintiff Ridgway) has previously served a complaint against defendant Prudential Insurance Company of America (Prudential) seeking payment of certain life insurance proceeds payable upon the death of Richard H. Ridgway.

2. By motion dated June 8, 1979, plaintiff Donna Ridgway requested leave of court to join in these proceedings as plaintiff seeking payment to herself as widow of Richard H. Ridgway of the same insurance proceeds which are the subject of the previous action.

3. On December 7, 1977, a divorce was granted to plaintiff April Ridgway from Richard H. Ridgway. A copy of the divorce decree is attached hereto as exhibit A.

4. The terms of the divorce decree had been agreed upon in advance by plaintiff April D. Ridgway and Richard H. Ridgway for the benefit of themselves and their three minor children following months of negotiations regarding questions of support for the children, clothing allowances, assumption of responsibility for payment of existing bills, maintenance of existing life insurance and payment thereof, and attorneys' fees.

5. The terms of the decree concerning the property settlement and continuing financial obligations of Richard H. and April D. Ridgway represented compromises from the original positions taken by the respective parties and were agreed to upon the understanding that the terms of the parties' agreement setting forth their mutual duties and obligations would be incorporated into the final divorce decree for their mutual benefit and the benefit of their three minor children.

6. Paragraph 5 of the final divorce judgment required Richard H. Ridgway to keep in force his existing life insurance and make it payable to his three children.

7. On or before April 3, 1978, in violation of the terms of the aforesaid agreement between the parties to the divorce judgment and of the divorce judgment itself, Richard H. Ridgway purported to change the beneficiary designation on his life insurance policy by writing the words "at law" on a form provided for designating beneficiaries of servicemen's life insurance.

8. Defendant Prudential has taken the position that, as a result of the aforesaid purported change of beneficiary, it is legally obligated to pay the total proceeds of Richard H. Ridgway's life insurance to his widow, Donna Ridgway.

9. As a result of the facts recited above, Donna Ridgway stands in the position of a constructive trustee of said insurance proceeds for the benefit of the three minor children of Richard H. and April D. Ridgway.

WHEREFORE, plaintiff and cross claimant April D. Ridgway in her said capacity demands judgment against Donna Ridgway declaring that she has no legal right to retain the proceeds of the life insurance of Richard H. Ridgway as against his three minor children and that Donna Ridgway stands in the position of a constructive trustee for the benefit of said children of said insurance proceeds and directing defendant Prudential to pay said proceeds to plaintiff April Ridgway as the natural guardian and next friend of the three minor children and for their exclusive benefit, said payment to fully discharge the contractual obligation of defendant Prudential under said insurance policy.

Defendant Prudential's Answer to Complaint of Plaintiff Donna Ridgway, dated June 27, 1979

NOW COMES the Defendant in the above-entitled action, The Prudential Insurance Company of America, and answers the Complaint of Plaintiff Donna Ridgway, set forth by reference in the joint motion of said Donna Ridgway, fellow Plaintiff April D. Ridgway and Defendant The Prudential Insurance Company of America, dated June 8, 1979, as follows:

1. Defendant The Prudential Insurance Company of America admits the allegations contained in paragraph 2 of the Complaint of April D. Ridgway, dated April 13, 1979, as the same is made applicable to Plaintiff Donna Ridgway by reference in the parties' joint motion of June 8, 1979 (paragraph 1 of the said April 13 Complaint being deleted by the June 8 motion).

2. Defendant admits the allegations contained in paragraph 3 of the said Complaint attributed by reference to Donna Ridgway.

3. Defendant admits the allegations contained in paragraph 4 of the said Complaint attributed by reference to Donna Ridgway.

4. Defendant admits the allegations contained in paragraph 5 of the said Complaint attributed by reference to Donna Ridgway.

5. Defendant admits the allegations contained in paragraph 6 of the said Complaint attributed by reference to Donna Ridgway.

6. Defendant admits the allegations contained in paragraph 8 of the said Complaint attributed by reference to Donna Ridgway.

Defendant The Prudential Insurance Company of America admits all of the allegations of the said Complaint attributed by reference to Plaintiff Donna Ridgway. In view of the Complaint of Plaintiff April D. Ridgway against the Defendant in this action, seeking payment of the policy proceeds to Plaintiff April D. Ridgway, Defendant states that a genuine case or controversy exists, and will honor the Order of the Court regarding the disposition of the proceeds of the said insurance policy.

Defendant's Motion for Consolidation of Hearing on Preliminary and Permanent Injunctions, dated June 28, 1979

NOW COMES Defendant Prudential Insurance Company of America and moves that this Court order that trial of the action on the merits be advanced and consolidated with the hearing on Plaintiff April D. Ridgway's Application for Preliminary Injunction.

Plaintiff April D. Ridgway joins in the foregoing motion.

Plaintiff Donna Ridgway joins in the foregoing motion.

Defendant's Motion to Dismiss Count II of Plaintiff April Ridgway's Amended Complaint, dated July 2, 1979

Defendant, The Prudential Insurance Company of America, moves to dismiss Count II of the Amended Complaint of Plaintiff April D. Ridgway for the reason that the said Count II fails to state a claim against the Defendant upon which relief can be granted, for the following reasons:

1. The said Count II against Defendant is entirely subjunctive and speculative, in that it is conditioned entirely upon the occurrence of an uncertain future event, namely the potential future entry of judgment in favor of Plaintiff April D. Ridgway on her cross claim against Plaintiff Donna Ridgway.

2. The sole theory of April Ridgway's cross claim against Donna Ridgway is that of a constructive trust in favor of the minor children of Plaintiff April Ridgway.

3. The constructive trust theory set forth in the said cross claim supplements, modifies and amends the divorce judgment between April Ridgway and the late Richard Ridgway, which judgment is the sole basis of April Ridgway's original complaint against Defendant, The Prudential Insurance Company of America.

4. It is apparent from the face of the cross claim that its allegations must be proven, if at all, by oral testimony regarding negotiations prior to, and resulting in, the divorce judgment in its final written form.

5. Such supplementation, modification and amendment of the divorce judgment by oral testimony is barred as a matter of law by the Parol Evidence Rule.

6. The proper determination of the sole and absolute payee of the policy proceeds must be made solely on the law and must be based solely on the divorce judgment before the Court and the applicable federal statutory law, without extrinsic evidence.

7. For the foregoing reasons, Plaintiff April Ridgway's constructive trust theory, as a condition precedent to Count II of her amended complaint against the Defendant, is without legal basis.

WHEREFORE, Defendant The Prudential Insurance Company of America moves that Count II of the complaint of Plaintiff April D. Ridgway against Defendant be dismissed.

Entry of Appearance by Peter M. Garcia, Esq. as counsel for Plaintiff Donna Ridgway, dated July 10, 1979

Mrs. Marian Kelleher, Clerk
Androscoggin County Superior Court
2 Turner Street
Auburn, ME 04210

RE: Ridgway et al. v. The Prudential
Docket No. CV 79-209

Dear Marian:

Please note the entry of my appearance on behalf of Mrs. Donna Ridgway, Plaintiff by virtue of joint motion to add her as such, pursuant to M.R.C.P. 19 dated June 8, 1979.

All future notices concerning this matter should be directed to Mrs. Donna Ridgway in care of this office. Please be sure to note that we do not represent April Ridgway, a different party plaintiff who is represented by G. Curtis Webber, Esq.

Order granting Plaintiff's Motion to Amend Complaint and to add Cross-Claim, dated July 23, 1979

This cause came on for hearing, and was argued by counsel, upon the motion of the Plaintiff's Motion to Amend Complaint and Cross Claim

IT IS ORDERED, ADJUDGED AND DECREED that:

the motion be, and hereby is, GRANTED. Complaint and cross-claim amended as prayed.

s/Louis Scolnik

Justice, Superior Court

Stipulation dated August 13, 1979

The parties stipulate to the truth of the following facts:

1. On December 8, 1975, decedent, Richard Ridgway represented that he had in force a Serviceman's Life Insurance policy in the face amount of $20,000 payable to April Ridgway.

2. Prior to their divorce, April Ridgway and Richard Ridgway carried on directly and through their attorneys, over a period of many months, negotiations regarding a property settlement including the disposition of Richard's existing life insurance. It was the intention of the parties that any agreement reached as a result of their negotiations would be incorporated into the divorce decree. In the course of the negotiations, a number of compromises were worked out between the parties regarding a division of the marital property and Richard's continuing obligation to support his children. The divorce decree dated December 7, 1977 did in fact incorporate the property settlement ultimately agreed to by the parties.

By stipulating to the truth of the factual statements in the foregoing paragraphs neither Plaintiff Donna Ridgway nor Defendant The Prudential Insurance Company of America concedes the admissibility in evidence of the said statements or facts, and each expressly reserves the right to object to the introduction into evidence of the foregoing statements and facts.

Answer and Defenses of Donna Ridgway to Cross-Claim of Hayley D. Ridgway et al, dated August 13, 1979

1. The allegations in Paragraphs 1, 2, 3, 6 and 8 of the cross-claim are admitted.

2. Plaintiff Donna Ridgway is without sufficient information to form a belief as to the truth or falsity of the allegations in Paragraphs 4, 5 and 7 of the cross-claim, and therefore denies same.

3. Plaintiff Donna Ridgway denies the allegations in Paragraph 9 of the cross-claim.

WHEREFORE, Plaintiff and Cross-Claim Defendant Donna Ridgway demands judgment declaring that she is entitled to receive the entire proceeds of the life insurance of Richard H. Ridgway, the subject of this action, free and clear of the rights of any other persons and in full satisfaction of the obligations of The Prudential Insurance Company of America under said policy, and such other and further relief as the Court may find just in the premises.

Defenses

1. The declaration sought by Plaintiffs Hayley D. Ridgway et al. in their complaint and cross-claim is barred by the Supremacy Clause of the United States Constitution.

2. The complaint and cross-claim of Plaintiffs Hayley D. Ridgway et al. fail to state a claim upon which relief can be granted insofar as they allege the theory of constructive trust.

WHEREFORE, Plaintiff and Cross-Claim Defendant Donna Ridgway demands judgment declaring that she is entitled to receive the entire proceeds of the life insurance of Richard H. Ridgway, the subject of this action, free and clear of the rights of any other persons and in full satisfaction of the obligations of The Prudential Insurance Company of America under said policy, and such other and further relief as the Court may find just in the premises.

Defendant Prudential's Answer to Amended Complaint of Plaintiff Hayley D. Ridgway et al, dated August 17, 1979

NOW COMES the Defendant in the above-entitled matter, the PRUDENTIAL INSURANCE COMPANY OF AMERICA, and states as follows:

The Motion of the Defendant to dismiss Count II of Plaintiff, Hayley Ridgway's Complaint (designated April Ridgway's Complaint) was not heard prior to the consolidated hearing on Plaintiff Hayley Ridgway's Motions for preliminary and permanent injunctions against the Defendant on August 13, 1979. Since the motion raised issues which were central to the principal action, by agreement of counsel, and with approval of the Court, the substance of the Motion was subsumed into the principal action.

The undersigned attorney thereupon pointed out to the Court that, with the Motion not having been treated prior to the principal hearing, this left the Defendant in the position of having filed no answer to Count II of the Amended Complaint. Whereupon, the Court ordered that the Defendant be granted a period until August 17, 1979, within which to file an Answer to Amended Count II of the Complaint of Hayley D. Ridgway et al.

In accordance with the foregoing Order, Defendant, the PRUDENTIAL INSURANCE COMPANY OF AMERICA hereby answers Count II of the said Amended Complaint as follows:

1. In response to the incorporated allegations contained in Paragraph 1 of Count II of the Amended Complaint, Defendant repeats and realleges its responsive pleadings set forth to each of the allegations contained in Count I of the Complaint, as if set forth at length herein.

2. Defendant admits that the Plaintiff has taken the actions alleged in Paragraph 2 of Count II of the Amended Complaint, but denies that Plaintiff, Donna Ridgway is or should be a constructive trustee and further denies that the proceeds of the life insurance policy on the life of Richard H. Ridgway should be paid

to April D. Ridgway as the next friend and guardian of Plaintiffs, Hayley D. Ridgway et al.

WHEREFORE, Defendant demands that judgment on the cross claim of Plaintiff Hayley D. Ridgway et al against Plaintiff Donna Ridgway be rendered in favor of the said Donna Ridgway; and that if so rendered the proceeds of the said insurance policy be adjudged payable to the said Donna Ridgway absolutely, and not as constructive trustee for the benefit of Hayley D. Ridgway et al. Defendant further prays that such payment to Plaintiff, Donna Ridgway be deemed finally and totally determinative of the rights and obligations of all parties to this action in and to the said insurance policy and the proceeds thereof, including the obligations of Defendant, the PRUDENTIAL INSURANCE COMPANY OF AMERICA as to the payment of such proceeds.

Order of the Superior Court dated September 13, 1979

This cause came on for hearing, and was argued by counsel, upon the motion of the Defendant to Dismiss and of the Defendant for Consolidation (M.R.C.P. 65(B) (2)) and Hearing on Preliminary & Permanent Injunction _____

IT IS ORDERED, ADJUDGED AND DECREED that:

see decision _____

s/Louis Scolnik

Justice, Superior Court

Decision and Order of Superior Court dated September 14, 1979

This case is before the court on the complaint of April Ridgway, as mother and next friend of Hayley D., Laurie R. and Brady L. Ridgway, for a declaration of rights regarding the payment of the proceeds of a life insurance policy on the life of their father, Sergeant Richard Ridgway. The complaint includes an application for a preliminary injunction enjoining the payment of the proceeds to the Plaintiff, Donna Ridgway (now Pinjani), the widow, and second wife, of Sergeant Ridgway. There is also a cross-claim against Donna Ridgway in Count Two of the amended complaint which seeks to make her a trustee under a constructive trust for the benefit of the minor children of any proceeds of the policy which might be paid to her. A Temporary Restraining Order enjoining the insurance company from paying the proceeds of the policy to the widow is in force. By stipulation, trial on the merits of the complaint has been consolidated with hearing on the application for a preliminary injunction pursuant to Rule 65 (b) (2) M.R.Civ.P.

For the reasons given below, the application for preliminary and permanent injunction, the request for declaratory judgment in favor of the minor children, and the request for imposition of a constructive trust are all denied. The Temporary Restraining Order, granted on April 13, 1979, is dissolved, and the Defendant insurance company is ordered to pay the proceeds of the life insurance policy on the life of Sergeant Richard Ridgway to his widow, Donna Ridgway Pinjani.

The essential facts of the case are not in dispute and have been stipulated. Sergeant Richard D. Ridgway was at one time married to April Ridgway. The couple had three children, who are now the actual plaintiffs in this case. At all relevant times, Richard Ridgway was a member of the armed forces. On December 7, 1977, Sergeant Ridgway and April Ridgway were divorced. It is stipulated (unless barred by the parol evidence rule) that prior to the divorce, extensive negotiations regarding a property settlement were carried on. Included in these negotiations was discussion of a Servicemen's Group Life Insurance Policy (SGLI) on the life of Sergeant Ridgway, in the amount of $20,000.00, and on December 8, 1975, Sergeant Ridgway told April Ridgway that she was the beneficiary. The result of the negotiations with regard to this life insurance policy was included

in the divorce decree as follows:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard Ridgway married the Plaintiff, Donna Ridgway. On April 3, 1978, Sergeant Ridgway directed that the proceeds of his SGLI policy be paid as specified "by law" which the parties agree directs the proceeds to be paid to Richard's widow, and second wife, Donna.

Sergeant Ridgway died on January 5, 1979. April Ridgway filed a claim under the policy, based on the divorce decree, and Donna Ridgway filed a claim, as widow, based on the above cited statute and April 3, 1978 designation of beneficiary. Following the filing of these claims, April Ridgway, on behalf of her children, filed a complaint against Defendant Prudential Life Insurance Company, seeking a declaratory judgment that pursuant to the divorce decree, the children were entitled to the proceeds of the policy. She included in the complaint an application for a preliminary injunction enjoining payment to Donna Ridgway. She also requested a Temporary Restraining Order enjoining payment of the proceeds to Donna Ridgway, which was granted, without notice, on April 13, 1979. On June 8, 1979, April Ridgway, Prudential Life Insurance Company and Donna Ridgway, all joined in a motion to include Donna Ridgway as a party plaintiff pursuant to Rule 19 M.R.Civ.P. This motion was granted on June 21, 1979. On the same day, April Ridgway, on behalf of her children, filed a cross-claim against Donna Ridgway. By this cross-claim, she seeks to have the proceeds of the policy in the hands of Donna Ridgway subjected to a constructive trust for the benefit of the plaintiff children. A second count was added to the original complaint by a motion granted on July 23, 1979, which likewise requests that the funds be held by Donna Ridgway as constructive trustee to be paid directly to April Ridgway as next friend and guardian of her children.

Although this action is in the nature of an interpleader, the real contest is obviously between the two Plaintiffs. Defendant admits

that it will have to pay the proceeds of the policy to someone but seeks judicial guidance as to the appropriate recipient. Unlike an interpleader, however, the Defendant has taken the position that Donna Ridgway, the properly designated beneficiary of the contract by virtue of 38 U.S.C. §778 (a), is the proper party to receive payment. The issue presented by the amended complaint is whether or not April Ridgway's request for declaratory relief, injunctive relief, and a constructive trust is barred by virtue of the Supremacy Clause of the United States Constitution.

Discussion of Law

Between 1956 and 1965, persons in the military service were not covered by any life insurance under federal legislation unless they had retained government life insurance issued before April 25, 1951. In 1965, owing to the intensification of the Vietnam War, Congress enacted the Servicemen's Group Life Insurance Act. Originally, the Act allowed coverage up to a maximum amount of $10,000.00. The maximum coverage was enlarged in 1970 (P.L. 91-291) and again in 1974 (P.L. 93-289). The present day maximum coverage is $20,000.00. It is automatic for all persons on active duty for more than 30 days. However, the insured is given the opportunity of reducing the coverage to $15,000.00, $10,000.00 $5,000.00 or to cease participation in the program entirely. 38 U.S.C. §767.

The SGLI program is different from past military life insurance programs in that the government is not the insurer. Under SGLI, the Veteran's Administration is authorized to take out a group life insurance policy with a qualified primary commercial insurer. The program is administered by the commercial insurer under the supervision of the Veterans' Administration. 2 U.S. Code Cong. and Admin. News, p. 3317 (1974).

The Administrator of Veterans' Affairs is given the authority to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration." 38 U.S.C. §210 (c) (1). Pursuant to this authority, the Administrator has promulgated several regulations regarding the designation of beneficiaries in an SGLI policy. The insured is allowed to designate "any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. §9.16 (a). Further, "A change of

beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." 38 C.F.R.§9.16 (e).

It is clear that in passing the Servicemen's Group Life Insurance Act in 1965, Congress intended to pre-empt the field of military life insurance. *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971). The regulations propounded by the Administrator of Veterans' Affairs under the authority of Congress are consistent with the intent of the Act. Compare 38 C.F.R.§9.16 (a-f) with 2 U.S. Code Cong. and Admin. News, p. 3232 (1965). Therefore, any state law inconsistent with the federal statute or regulations is displaced by federal law by virtue of the Supremacy Clause of the United States Constitution. *U.S. v. Shimer*, 367 U.S. 374, 6 L.Ed.2d 908, 81 S.Ct. 1554 (1960).

38 U.S.C. §770, and the regulation promulgated thereunder, does more than provide a procedure for the designation of a beneficiary. The serviceman is given the absolute right to designate any person or legal entity as beneficiary of his life insurance policy. *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (Neb. 1968); *Stratton v. S.G.L.I.*, 422 F.Supp. 1119 (D.C. Iowa 1976). Since the divorce decree orders Sergeant Ridgway to designate a certain group of people as beneficiaries, the decree is inconsistent with the rights given him under federal law, and it must yield. Cf. *In re Marriage of Milhan*, 117 Cal. Rptr. 809, 528 P.2d 1145 (Cal. 1974), cert. denied, 421 U.S. 976. As a result, April Ridgway's request for a declaratory judgment in favor of the cildren, and her application for injunctive relief, based on the rights given in the divorce decree, must be denied.

The Plaintiff, April Ridgway, has also requested that a constructive trust be imposed on any proceeds of the policy paid to Donna Ridgway Pinjani. She argues that while the Defendant may have the absolute right to pay the proceeds to Donna Ridgway by virtue of federal law, federal law does not prevent the insured from making a binding contract for the disposition of the proceeds. She also contends that federal law in no way prevents the court from enforcing such an obligation with a constructive trust for the benefit of her children.

Many courts have held that when a party to a divorce agrees to designate the other party as beneficiary of any life insurance contracts, and such agreement becomes a part of the decree, the

beneficiary of the agreement has an equitable right to those proceeds. If such an agreement is violated by the insured subsequently changing the beneficiary designation, a constructive trust is often the remedy granted by the court. *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E.2d 189 (N.Y. 1978). However, the Simonds case, and all cases so holding, are distinguishable from this case in that they do not involve federal law.

April Ridgway's contention that federal law does not prevent a constructive trust in this situation is without merit. Federal regulations, in addition to giving the insured the right to designate anyone as a beneficiary at any time, also provide that any designation made will be effective only if it is in writing signed by the insured, and received by the uniform service involved before the death of the insured. 38 C.F.R. §9.16 (d) and (f). These regulations are to be strictly construed, *Stribling v. U.S.*, 419 F.2d 1350 (8th Cir. 1969). Here, it is undisputed that the divorce decree was never received by the proper office. Therefore, it has no effect on the designation of a beneficiary. Moreover, it is undisputed that, following his marriage to Donna Ridgway, the insured filed a proper form in the proper office to change the beneficiary. Because of the absolute right given the insured to change the beneficiary of the policy at any time by proper filing, this filing, subsequent to the divorce decree, would have changed the beneficiary even if the decree had been properly filed. Therefore, it is clear that federal law gives Donna Ridgway a legal right to the proceeds of this insurance policy. The equitable power of the court cannot interfere with this positive federal law by imposing a constructive trust. See *Weymann v. Wilson*, 320 F.Supp. 980 (Fla. 1970).

April Ridgway is correct in saying federal law does not prevent the insured from making a binding agreement for disposition of the proceeds of an SGLI policy. The agreement embodied in the divorce decree is valid, and it would appear to give her a cause of action, on behalf of her children, against the estate of her former husband. *Stratton v. S.G.L.I., supra.* The Supremacy Clause requires that the federal statute override the court's equitable power to enforce such an agreement with a constructive trust. Accordingly, the entry must be:

The Plaintiff, April Ridgway's, request on behalf of her minor children, for a declaratory judgment and for injunc-

tive relief against the Defendant, Prudential Life Insurance Company, is *DENIED*. The Temporary Restraining Order issued on April 13, 1979, is *DISSOLVED*. The Plaintiff, April Ridgway's, request for imposition of a constructive trust is *DENIED*. The Defendant, Prudential Insurance Company, is *ORDERED* to pay the proceeds of the insurance policy on the life of the late Richard Ridgway to his widow, Donna Ridgway Pinjani.

Amendment to Decision and Order of Superior Court, dated September 20, 1979

The Decision and Order dated September 14, 1979 is amended as follows:

All references to Donna Ridgway Pinjani are changed to read Donna Ridgway.

s/Louis Scolnik

Louis Scolnik
Justice, Superior Court

Notice of Appeal by Plaintiffs Hayley D. Ridgway et al, dated September 20, 1979

Plaintiffs appeal from the judgment of this court issued September 14, 1979.

Further Amendment to Decision and Order of Superior Court, dated October 11, 1979

The Decision and Order of this Court dated September 14, 1979 as previously amended is further amended as follows:

On the final page of the order, the entry of judgment is amended by striking out the period after the words "constructive trust is *DENIED*." and adding the words: "and her cross claim is *DISMISSED*."

s/ Louis Scolnik
Louis Scolnik
Justice, Superior Court

Notice of Appeal from Further Amended Decision, dated October 18, 1979

Plaintiffs Hayley D. Ridgway, Laurie R. Ridgway, and Bradie Leigh Ridgway, by their mother and next friend, April D. Ridgway, appeal from the decision and order of the Superior Court dated September 14, 1979 as amended on September 20th and October 11th.

Stipulation Setting Forth Issue on Appeal dated October 22, 1979

All counsel agree that the facts found in the presiding justice's decision and order as amended are correct and stipulate that the findings of fact are not challenged on appeal. It is also stipulated that all exhibits presented below including the copy of the divorce decree attached to the complaint were properly admitted into evidence. It is further stipulated that the sole issue raised on this appeal is as follows:

> Whether or not the presiding justice erred in ruling that, on the basis of the facts found, he could not impose a constructive trust on the proceeds of Sergeant Ridgway's insurance.

It is also stipulated that, pending a resolution of this appeal, the proceeds of Sergeant Ridgway's life insurance policy which constitute the subject of the appeal will be paid to the Clerk of the Superior Court to be held at interest to be finally disposed of in accordance with the judgment of the Law Court.

Motion Regarding Deposited Funds, dated November 1, 1979, and Order issued on said Motion, dated December 20, 1979

1. This Motion is brought pursuant to 4 M.R.S.A. 556 and Rule 67 of the Maine Rules of Civil Procedure.

2. The subject matter of this action is a dispute between Donna Ridgway and April Ridgway, on behalf of minor children, over the proceeds of a life insurance policy issued by the Defendant.

3. All of the parties are agreed that the proceeds of the said insurance policy, some $20,000 plus accrued interest, should be deposited with the Clerk of the Androscoggin County Superior Court to be paid over to the prevailing party upon entry of final judgment.

4. All of the parties are agreed that the Clerk should be authorized and ordered to invest the said funds in a so-called six month money market certificate, bearing interest at a rate tied to the Treasury Bills issued by the United States Department of Treasury for a period of six months from receipt, and thereafter in the demand deposit yielding the highest available interest rate in the local area until final judgment.

5. Four M.R.S.A. 556 provides that the Court may order the Clerk to pay all of the interest on deposited money to the parties. Absent such an order, one-half of said interest would become the property of the Treasurer of State.

WHEREFORE, the parties join in moving the Court to authorize and order the Clerk to invest the deposited funds with Northeast Bank of Lewiston-Auburn in the described six-month certificate, and thereafter at demand, pay all of the accrued interest to the prevailing party, and provide such other and further relief as the Court may find just in the premises.

ORDER

All the parties being in agreement as indicated by signatures of counsel above, and there appearing no need for further notice, it is hereby ORDERED that the Clerk of the Androscoggin County Superior Court invest the funds to be deposited by the Defendant in a so-called six month money market certificate at the Northeast Bank of Lewiston-Auburn, and upon expiration thereof, at interest on demand until final judgment herein, whereupon the Clerk is ordered to turn over all of the principal and accrued interest to the prevailing party.

s/William E. McCarthy
Justice, Superior Court

Decision of Maine Supreme Judicial Court
dated September 26, 1980

Argued: March 17, 1980
Decided: September 26, 1980

Before McKUSICK, C.J., and GODFREY, NICHOLS, GLASSMAN and ROBERTS, JJ.

GLASSMAN, J.

In this case, we are called upon to decide a very narrow but important issue: whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy in favor of a deceased serviceman's minor children when, contrary to a property settlement agreement and an express judicial decree, the serviceman failed to name the minor children as beneficiaries of that insurance.

Richard Ridgway, a career Army sergeant, was insured under a Servicemen's Group Life Insurance (SGLI) policy in the amount of $20,000. As of 1975, the designated beneficiary of this policy was the insured's wife, April Ridgway. On December 7, 1977, April was granted a divorce from Richard in the Superior Court, Androscoggin County. The divorce decree incorporated a property settlement agreement whereby Richard agreed to maintain for the benefit of his minor children the insurance policies on his life which he then owned. The divorce decree expressly commanded that he

> keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

On March 28, 1978, Richard married Donna Ridgway. Six days later, he changed the beneficiary designation on the SGLI policy, directing that the proceeds of the policy be paid as speci-

fied "by law." Under federal law, this designation was effective upon Richard's death to direct payment of the proceeds to his widow, Donna. *See* 38 U.S.C. § 770(a) (1976); 38 C.F.R. § 9.16 (1979). Richard died on January 5, 1979; both Donna, as the decedent's widow, and April, on behalf of her minor chidren, filed claims for the proceeds of the policy.

On April 13, 1979, April filed a complaint in the Superior Court, Androscoggin County, against The Prudential Insurance Company of America after the insurer had indicated that it intended to pay the proceeds of the SGLI policy to Donna. The complaint sought a declaration that pursuant to the divorce decree the minor children were entitled to the policy proceeds as well as both permanent and temporary injunctive relief to prevent Prudential from paying the proceeds to Donna. By stipulation, Donna subsequently joined the action as a party plaintiff, requesting that the insurance proceeds be paid to her. *See* M.R.Civ.P.19(a). By leave of court, April then amended the complaint to designate the three children as parties plaintiff and herself as next friend. *See* M.R.Civ.P. 17(b). By further amendment and the filing of a cross-claim against Donna, April sought the imposition of a constructive trust for the benefit of her children on any proceeds of the policy paid to Donna and an order that in the event Donna was declared a constructive trustee Prudential pay the proceeds directly to the minor children. Following consolidation of the preliminary injunction hearing with a hearing on the merits, *see* M.R.Civ.P. 65(b) (2), the case was submitted on the basis of the stipulated facts.

The Superior Court ruled that federal law gave an insured serviceman an absolute right by statutorily prescribed means to designate or to change the beneficiary of an SGLI policy, and, therefore, under the supremacy clause of the federal constitution, U.S. Const. art. VI, cl. 2, the insurance proceeds must be paid to Donna despite the inconsistent decree ordering the insured to designate the minor chidren as beneficiaries of the policy. On this ground, the Superior Court denied April's request for declaratory and injunctive relief in favor of the children based on rights granted in the divorce decree. The court also denied April's request for imposition of a constructive trust on the insurance proceeds and dismissed the cross-claim against Donna, reasoning that federal law would also prohibit equitable interference with Donna's right to the proceeds of the policy. Accordingly, the

Superior Court ordered Prudential to pay the proceeds of the policy to Donna.

April has appealed on behalf of her minor children. By agreement of the parties, the insurance proceeds have been deposited with the Clerk of the Superior Court awaiting decision by this Court. Because of this agreement, any question as to the propriety of the Superior Court's denial of injunctive relief is moot. The only issue presentd to us is whether the Superior Court was in error in declining to impose a constructive trust on the insurance proceeds for the benefit of the minor children. This issue is joined in April's cross-claim against Donna. We vacate the dismissal of the cross-claim.

Courts have commonly imposed a constructive trust on the proceeds of life insurance policies in the hands of a named beneficiary when the deceased has failed, contrary to the provisions of a property settlement agreement or a divorce decree, to name his divorced wife or his children by his divorced wife as the beneficiaries of the life insurance policies. *See, e.g., McKissick v. McKissick*, 93 Nev. 139, ____, 560 P.2d 1366, 1369 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, ____, 380 N.E.2d 189, 191, 408 N.Y.S.2d 359, ____ (1978); *Richards v. Richards*, 58 Wis.2d 290, ____, 206 N.W.2d 134, 138 (1973). Donna and Prudential contend that these cases have no application to Servicemen's Group Life Insurance because Congress has preempted the field and legislated as to how the proceeds of such policies are to be distributed. It is their contention that the supremacy clause of the federal constitution prohibits a state court from imposing a constructive trust on the proceeds of an SGLI policy.

Pursuant to its power over national defense, Congress has adopted legislation establishing the SGLI program. *Cf. Wissner v. Wissner*, 338 U.S. 655, 660-61 (1950). There can be no question that Congress has the power fully to preempt the field when legislating pursuant to one of the express powers granted to it in the Constitution. If it has done so, the supremacy clause prohibits state action inconsistent with the congressional design. In the absence of an express preemption, it has been noted by an authority on consitutional law:

> The question whether federal law "preempts" state action, largely one of statutory construction, cannot be reduced to general formulas. In evaluating patterns of statutory interac-

tion, the Supreme Court has declared generally that whether challenged state action has been preempted turns on whether or not it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." L. Tribe, *American Constitutional Law* 377 (1978), *quoting Hines v. Davidowitz,* 312 U.S. 52, 67 (1941).

Thus, the issue in this case is whether the imposition of a constructive trust on the insurance proceeds in the hands of Donna for the benefit of Richard's minor children "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.*

The Servicemen's Group Life Insurance Act (SGLIA), 38 U.S.C. §§ 765-76 (1976), was enacted by Congress in 1965. The SGLIA authorized the Administrator of Veterans' Affairs to purchase from commercial insurers a group life insurance policy which provides qualified servicemen automatic coverage in a maximum amount of $20,000. 38 U.S.C. §§ 766(a), 767(a) (1976). A uniform premium is deducted from the servicemen's pay, but each insured can in writing opt out of the program or reduce the amount of coverage. *Id.*, §§ 767(a), 769(a). The Administrator of Veterans' Affairs has been granted broad rule-making authority in supervising this military insurance program. *Id.*, § 210(c) (1).

Section 770(a) of the SGLIA establishes a statutory order of beneficiary preference. In pertinent part, this section provides:

> Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid . . . in the following order of precedence.
>
> First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . . ;
>
> Second, *if there be no beneficiary, to the widow or widower or such member or former member*;
>
> Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation . . . . 38 U.S.C. § 770(a) (1976) (emphasis added).

See also 38 C.F.R. § 9.16(i) (1979). Section 770(g) creates a statutory spendthrift provision:

> Payments of benefits due or to become due under Servicemen's Group Life Insurance... made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 770(g) (1976).

Pursuant to his rule-making authority, the Administrator has promulgated several regulations concerning the designation and change of beneficiaries of SGLI policies. An insured "may designate any person, firm, corporation or legal entity" as beneficiary. 38 C.F.R. § 9.16(a) (1979). "Any designation or change of beneficiary will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service...." *Id.*, § 9.16(d). "A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary." *Id.*, § 9.16(e). "No change or cancellation of beneficiary in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section." *Id.*, § 9.16(f).

The objectives to be achieved by the enactment of the SGLIA were enumerated in a statement by W.J. Driver, Administrator of Veterans' Affairs, which is a part of the legislative history. *See* [1965] U.S. Code Cong. & Ad. News 3232, 3242-43. These objectives were: first, to make available to servicemen serving in a combat zone life insurance at standard rates and without war exclusion clauses; second, to make survivorship benefits available to non-dependent parents of deceased servicemen without the necessity that the parents meet a "needs" test; and third, to permit servicemen to provide survivorship protection for individuals such as brothers and sisters without any showing of dependency. *Id.* In the limited circumstances which are here presented, the accomplishment of these objectives is neither obstructed nor interfered with by imposing a constructive trust on the insurance proceeds.

The statutory order of beneficiary preference established by

Section 770(a) does not reflect any federal interest in permitting a serviceman to evade the responsibility to provide for his minor children imposed both by virtue of his voluntary agreement and by the express provision of a valid state court decree. Furthermore, the statutory spendthrift provision found in Section 770(g) has no application to the instant case since its purpose is to protect the proceeds of the insurance from the claims of creditors. We are concerned here not with the claim of a creditor but with the claims of minor children who assert an equitable interest in the proceeds arising from their deceased father's voluntary agreement and a valid judicial decree. Moreover, the promulgated regulations governing the designation and change of beneficiaries do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children.

Prudential and Donna assert that the statutory provisions reflect an intention by the Congress to assure ease of administration by the private insurance carriers. Nothing either in the language or in the legislative history of the SGLIA indicates that Congress at any time was concerned with the administrative convenience of the private insurance carriers.

Prudential and Donna also cite several judicial decisions which, they contend, establish that federal preemption precludes the imposition of a constructive trust in this case. We have carefully examined all those authorities and conclude that they are either distinguishable, not controlling, or both.

For example, in the case of *Wissner v. Wissner*, *supra*, the deceased serviceman had been insured under a National Service Life Insurance policy and had paid the premiums from his pay, which under the law of his domicile, California, was community property. The insured had named his mother as principal beneficiary and his father as contingent beneficiary. The insured's widow brought suit in a California court claiming entitlement to one-half the proceeds of the insurance policy under the state's community property law. Reversing a judgment in favor of the wife, the United States Supreme Court held that the general statutory community property law of the state of California could not override the general statutory provisions governing National Service Life Insurance which gave the insured the right to designate his beneficiary. 338 U.S. at 658-59. The Court specifically noted that a different result might obtain in cases involving

alimony and/or support, stating:

> [W]e must note that the community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit. Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases. *Id.* at 660 (citation omitted).

In *Johnson v. Prudential Insurance Company of America*, 182 Neb. 673, 156 N.W.2d 812 (1968), the mother of a deceased serviceman sought to recover the proceeds of an SGLI policy as against the designated bneneficiary, the serviceman's fiancee, on the theory that under state law the serviceman invalidated his designation of beneficiary. The Nebraska court held that Congress, in authorizing a serviceman to designate the beneficiary of his SGLI policy, did not make any exception for minor servicemen and, therefore, the deceased's designation was controlling. *Id.* at ____, 156 N.W.2d at 814.

In *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), a divorce decree issued by a Washington court required a serviceman husband to designate, keep and maintain his wife as the sole beneficiary on his National Service Life Insurance policies. Contrary to this decree, the husband designated another beneficiary and upon his death his former wife sued the United States and the designated beneficiary to recover the proceeds of the insurance policies. The Ninth Circuit Court stated the issue before it as follows:

> Does a state court have the power to effectively require an *unwilling* veteran to maintain his former wife as beneficiary on his National Service Life Insurance policies? *Id.* at 196 (emphasis added).

In reliance upon its interpretation of *Wissner v. Wissner*, *supra*, the court of appeals answered the question it had posed in the negative. It was able to characterize the serviceman in the *Hoffman* case as "unwilling" because he had not agreed to maintain his former wife as beneficiary. In the instant case, the serviceman

had agreed with his former wife to keep his policies in force for the benefit of his children. Thus, the subsequently issued divorce decree did not require an "unwilling" serviceman to maintain his minor children as beneficiaries.

Other cases have involved merely the issue whether certain actions of the deceased serviceman were effective under the SGLIA to designate or change a beneficiary. In *Stribling v. United States* 419 F.2d 1350 (8th Cir. 1969), the court construed the language of the SGLIA strictly, holding there had been no effective change of beneficiary since, as required by Section 770(a), the change of beneficiary form had not been received by the deceased's uniformed service prior to the serviceman's death. *Id.* at 1355. In *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971), the same court construed the SGLIA more liberally, holding that the serviceman had effectively designated his beneficiary since he had satisfied the two elements required for designation: the intent to designate a particular person as beneficiary and an overt act to effectuate that intent. *Id.* at 931. The court further dealt with an issue similar to that decided in *Johnson v. Prudential Insurance Company of America, supra*, namely that the serviceman's mother was not entitled to the proceeds of his SGLI policy on the theory, advanced under state law, that because the serviceman was a minor she had the sole right to his custody, control and services. *Id.*[1] In *Coomer v. United States*, 471 F.2d 1 (5th Cir. 1973), the father of a deceased serviceman brought an action to recover the proceeds of an SGLI policy which had been received by the serviceman's widow. The court held that the serviceman had effectively changed his beneficiary since he had filled out a beneficiary designation form provided by the personnel man in charge of records designating his father as his primary beneficiary and the form had been taken into possession by Navy personnel even though it had not been placed in the serviceman's file at the time of his death. *Id.* at 6.

1. Relying on *Stribling* and *King*, a federal district court has held that a state judicial decree could not alter a serviceman's federal right to designate his children as beneficiaries. *Stratton v. Servicemen's Group Life Ins. Co.*, 422 F.Supp. 1119, 1121-22 (S.D. Iowa 1976). Although we do not disagree with that conclusion, we are concerned here with the authority of a state court to enforce its own decrees by imposing a constructive trust on the insurance proceeds received by the designated beneficiary under a federal statutory scheme containing no express prohibition.

None of the foregoing authorities prohibit the imposition of a constructive trust in favor of the deceased serviceman's minor children in the circumstances of this case. We cannot see how imposing a constructive trust to enforce a valid judicial decree implementing the serviceman's voluntary agreement to name his minor children as the beneficiaries of his SGLI policy can in any way frustrate or impede the accomplishment of any legitimate federal objective. Nor do we find anything in the literal language of the statute or in its legislative history which would prohibit such action. In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decrees of our state courts. Our conclusion not only preserves the integrity of the state judicial process but also provides some assurance that these minor children will not become a public charge. We are not persuaded that Congress intended any different result.

We therefore vacate the judgment dismissing the cross-claim and remand the case to the Superior Court with directions to issue an order imposing a constructive trust on the proceeds of the SGLI policy insuring the life of Richard Ridgway and, since by stipulation the proceeds have been deposited with the Clerk of Courts to be distributed in accordance with the mandate of this Court, directing the Clerk of the Superior Court to pay the proceeds to April Ridgway for and on behalf of her three minor children.

The entry is:

Judgment of the Superior Court dismissing the cross-claim vacated.

Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway.

In all other respects the judgment is affirmed.

Appellant awarded her costs.

Mandate of the Maine Supreme Judicial Court
dated September 25, 1980

The above-captioned cause having been brought before this Court, sitting as the Law Court, from the _____ Superior Court in the County of Androscoggin ; and it having been heard and maturely considered;

IT IS ORDERED that the Clerk of the Law Court enter upon the Law Court Docket and certify to the Clerk of the _____ Superior Court in the County of Androscoggin the following mandate therein: Judgment of the Superior Court dismissing the cross-claim vacated. Remanded to the Superior Court with directions to enter an order naming Donna Ridgway as constructive trustee of the proceeds of the Servicemen's Group Life Insurance policy insuring the life of Richard Ridgway and directing the Clerk of the Superior Court to pay the insurance proceeds presently on deposit with said Clerk to April Ridgway for and on behalf of her minor children, Hayley Ridgway, Laurie Ridgway and Brady Ridgway. In all other respects the judgment is affirmed. Appellant awarded her costs.

For the Court,

/s/ Harry P. Glassman
Justice

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1070

DONNA RIDGWAY and
PRUDENTIAL INSURANCE COMPANY OF AMERICA, Petitioners

v.

HAYLEY D. RIDGWAY ET AL, Respondents

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondents move pursuant to Rule 53(1) of the Rules of this Court for leave to proceed in forma pauperis for the reasons stated in the attached affidavit.

Dated February 10, 1981

Attorney for Respondents
P. O. Box 190, 83 Pleasant St.
Auburn, Maine 04210

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1070

DONNA RIDGWAY and
PRUDENTIAL INSURANCE COMPANY OF AMERICA, Petitioners

v.

HAYLEY D. RIDGWAY ET AL, Respondents

AFFIDAVIT

I, April Furbush, hereby state under oath as follows:

Subsequent to the death of my ex-husband, Richard Ridgway, I married Carlton Furbush. My three children, none of whom is over the age of 12 years, reside with me and my husband. I am not employed outside the home and have no source of income from which I could finance my children's appeal. My children are in school and have no source of income from which they could pay for the cost of fees or of printing documents.

Dated February 10, 1981

April Furbush

STATE OF MAINE
ANDROSCOGGIN, SS. February 10, 1981

Personally appeared before me the above-named April Furbush and swore to the truth of the foregoing affidavit.

Sandra J. Farrau
Notary Public ~~Justice of the Peace~~

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October Term, 1980

No. 80-1070

DONNA RIDGWAY and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY by their mother and next friend, APRIL D. RIDGWAY,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MAINE

RESPONDENTS' BRIEF IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1070

DONNA RIDGWAY and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY by their mother and next friend, APRIL D. RIDGWAY,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MAINE

RESPONDENTS' BRIEF IN OPPOSITION

The respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the decision of the Supreme Judicial Court of Maine in this case.

QUESTION PRESENTED

When a serviceman has negotiated a settlement agreement with his wife by virtue of which he agrees to maintain his service life insurance in force after the divorce for the benefit of his children, which agreement is subsequently incorporated into the divorce decree, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state

court from imposing a constructive trust on the insurance proceeds for the benefit of the children if the serviceman thereafter names his second wife as beneficiary in defiance of the agreement and then dies?

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE DECISION BELOW OF THE MAINE SUPREME COURT DOES NOT PRESENT A CONFLICT WITH FEDERAL LAW WHICH WARRANTS REVIEW BY THIS COURT.

Petitioners have argued that the decision of the Maine Supreme Court is inconsistent with federal law and with judicial decisions from other jurisdictions. The "conflict" which petitioners perceive is apparent rather than real.

In the first place, petitioners suggest that the decision below is inconsistent with federal law since it limits the rights conferred upon a serviceman by the Servicemen's Group Life Insurance Act to change the beneficiary of his service life insurance whenever he pleases. See e.g. pp. 6 & 7 of the petition. Petitioners have devoted much energy to discussing cases in which inconsistent provisions of state law or state court divorce decrees were held to be pre-empted by federal statutes preserving a serviceman's right to change the beneficiary designation on his military life insurance at any time. See e.g. Prudential Ins. Co. v. King, 453 F.2d 925 (8th Cir. 1971); Stribling v. U.S., 419 F.2d 1350 (8th Cir. 1969); Stratton v. Servicemen's Group Life Ins. Co., 422 F.Supp. 1119 (D. Iowa 1976); Johnson v. Prudential Ins. Co., 182 Neb. 673, 156 N.W.2d 812 (1968) cited at p. 13 of the petition. The "conflict" is illusory since both respondents and the court below have conceded that the federal statutes in question supersede provisions of a state divorce decree requiring a serviceman to maintain his life insurance in force for the benefit of a wife or children by a prior marriage. The real issue is whether, after the designated beneficiary has received the insurance proceeds, he may

nevertheless be subject to a constructive trust in favor of persons whose equitable claims to the proceeds are superior to his own. Since none of the cases cited above even discuss the possibility that a constructive trust should be imposed, they add nothing to a resolution of the issue presented in the case at bar.

In setting out the question presented, petitioners have also omitted any mention of the fact that the divorce decree was based on a settlement agreement between Richard and April Ridgway. The existence of a negotiated agreement between the divorcing parties by virtue of which the serviceman commits himself to keep his military life insurance in force for the benefit of his former wife or children has generally been considered a critical element in cases in which a constructive trust has been imposed on the insurance proceeds. See e.g. McKissick v. McKissick, 560 P.2d 1366 (Nev. 1977); Hundertmark v. Hundertmark, 372 Pa. 138, 93 A.2d 856, 858 (1952). Clearly this was the view of the Maine Supreme Court. See e.g. pp. 16, 23, & 24 of the appendix to the petition.

The existence of the settlement agreement affects the balance of equities between the parties which gives rise to the constructive trust. It is obvious that in negotiating a division of the marital property, April Ridgway may have made concessions in order to secure Richard's agreement to keep his military insurance in force as a potential source of support for the children. When Richard later made Donna the beneficiary of his service life insurance policy, he acted in defiance of his own agreement as well as being in contempt of the court's decree.

Under these circumstances, the courts have held with near unanimity that the beneficiary of the life insurance policy holds the proceeds under a constructive trust for the benefit of those persons who would otherwise be deprived of the benefit of the bargain made by the insured. In a relatively recent opinion, Chief Judge Breitel has written that:

> In the words of Judge Cardozo, "(a) constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." Simonds v. Simonds, 45 N.Y.2d 233, 380 N.E.2d 189, 193 (1978).

Although petitioners contend that imposing a constructive trust on the proceeds of military life insurance is interdicted by federal law, they have cited no cases reaching this result. Petitioners have cited the case of Suydam v. U.S., 404 F.2d 1369 (D.C. Cir. 1968) as supporting their view that military life insurance can never be the subject of a constructive trust. Petition, p. 11. In that case, however, the military life insurance was never mentioned in the settlement agreement or the divorce decree. The court therefore found no evidence that the parties ever intended that the insurance proceeds would be held for the benefit of the insured's children. Since there was apparently no imposition on the plaintiff ex-wife as a result of the change of beneficiary, this result would plainly seem to be correct. Moreover, far from "specifically rejecting a constructive trust theory" as petitioners contend, the court in Suydam indicated that it would impose a constructive trust in a proper case even though the cestui que trust was not the person designated by the deceased serviceman as the beneficiary of the policy.

Petitioners concede that in two cases involving National Service Life Insurance a constructive trust was imposed on the insurance proceeds for the benefit of persons other than the designated beneficiaries despite the existence of statutory language identical with 38 U.S.C. §717(a) granting to the serviceman the irrevocable right to designate the beneficiary. See Burgess v. Murray, 194 F.2d 131 (5th Cir. 1952) and Voelkel v. Tohulka, 239 Ind. 588, 141 N.E.2d 344 (1957), cert. denied 355 U.S. 891 (1957) cited at p. 12 of the petition. Petitioners have attempted to distinguish these cases on the grounds that the result reached by the courts through the imposition of a constructive trust was consistent with the intent of the deceased

serviceman. In so contending, petitioners have missed the point. The issue is not whether the result is consistent with the servieceman's wishes, but whether state law is preempted in every case by 38 U.S.C. §770(a) from interposing a constructive trust which will prevent the beneficiary designated by the deceased serviceman in accordance with the statute from retaining the proceeds. By conceding that a constructive trust may ever be imposed in such cases, regardless of the serviceman's wishes, on the basis of equitable considerations rather than a literal application of 38 U.S.A. §§717(a) and 770, petitioners have conceded away the issue on which they base their claim of federal jurisdiction. Clearly the question of what circumstances will persuade a court of equity to impose a constructive trust is a matter of state rather than of federal law.

It is not clear what position petitioners take regarding the application of the "spendthrift" provisions of 38 U.S.C. §770(g) to the case at bar. In any event, it is now clear that the prohibition of §770(g) does not apply to claims for alimony and support.

In the case of Voelkel v. Tohulka, 239 Ind. 588, 141 N.E.2d 344 (1957), cert. denied 355 U.S. 891 (1957), the court held that a constructive trust should be placed on the proceeds of military life insurance for the benefit of the deceased serviceman's relatives despite the contention of the named beneficiary that they were insulated from such claims by 38 U.S.C. §454a (analogue of §770(g)). The Court stated that:

> It is plain (that) the object of this section is to protect the beneficiaries who are, by the act, close relatives and dependents of the deceased soldier from their own improvidence. This is in effect what is commonly known as a "spendthrift" clause. Clearly the purpose of section 454a, supra, is to prevent creditors from taking the proceeds of the soldier's insurance from his beneficiaries. We feel it should be interpreted in that light. The words "equitable process whatever" is limited to those processes brought by creditors. Id at p. 346 of 141 N.E.2d. See also In re Flanagan, 31 F.Supp. 403 (D. D.C. 1940); Gaskins v. Security-First Nat. Bank, 30 Cal. App.2d 409, 86 P.2d 681, 688 (Dist. Ct. of App. 1939).

The distinction between obligations to make support and alimony payments and ordinary types of debt was also recognized by this Court in Wissner v. Wissner, 338 U.S. 655 (1950). There the Court rejected the claim of a serviceman's widow that she was entitled to a portion of the proceeds of his military life insurance since the premiums had been paid out of community property. The Court distinguished cases such as those cited above on the grounds that:

> . . . (T)he community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit . . . . Venerable and worthy as this community is, it is not, we think as likely to justify an exception to the congressional language as specific recognition of particular needs, in the alimony and support cases. Id at 660.

It is also significant that sub-section 770(g) was added in 1970 by 91 Stat. 291. Since this legislative action was taken at a time when judicial construction of the existing analogues of 38 U.S.C. §770(g) had crystallized an exception for financial obligations arising out of the family relationship, it may be presumed that Congress intended §770(g) to be construed in the same manner. Cannon v. University of Chicago, 441 U.S. 677 (1979).

There is also no reason to attribute to Congress in enacting 38 U.S.C. §770(g) an intention to abet the efforts of persons in the military service to defraud their dependents by depriving them of benefits which they had committed themselves to provide under property settlement agreements and divorce decrees. In 1974, Congress enacted several amendments to the Social Security laws designed to facilitate collection of unpaid alimony and child support payments from military personnel and other federal employees. See 93 Stat. 647, 42 U.S.C. §659, making federal employees subject to garnishment and other collection processes available under state law to enforce judgments for child support and alimony. During the floor debate on these measures, Senator Montoya stated, after inserting in the record letters received from distressed ex-wives of servicemen:

> I believe it is time for us to make . . . this small change in our law in order to correct what is patently a disgraceful situation. We must give the wives and children of Federal employees the same legal protections which we have provided for other American women and children. 120 Cong. Rec. 40339 (1974).

From the foregoing, it is clear that the decision reached below by the Maine Supreme Court does not conflict with either 38 U.S.C. §717(a) or §770. Although there have been only a few cases which have considered whether a constructive trust may be judicially imposed under circumstances similar to those presented in the case at bar, petitioners have cited no case which is in conflict with the decision of the Maine Court and several which support it.

II. PETITIONERS HAVE FAILED TO IDENTIFY ANY POLICIES REFLECTED IN THE SERVICEMEN'S GROUP LIFE INSURANCE ACT WHICH WOULD BE FRUSTRATED BY THE IMPOSITION OF A CONSTRUCTIVE TRUST IN THE CASE AT BAR.

Petitioners have engaged in a certain amount of hyperbole in describing the importance of this litigation. Citing the rising divorce rate, they have implied that the disposition of an "enormous number" of military life insurance policies stands to be affected by the outcome. Petition, p. 7. Of the servicemen who presently own such policies and actually become divorced, only a comparative few will actually commit themselves in property settlement agreements to keep their policies in effect for the benefit of their children or ex-wives. Most of these servicemen will honor their agreements. It is only those who are callous enough to renege on their commitments and defy court orders directing them to maintain their insurance in force for their family members who will provoke a request that a constructive trust be imposed.

Petitioners have also suggested that confusion will be created among divorcing parties if the decision below is allowed to stand. It is unrealistic to assume, however, that servicemen and their spouses will be aware of court

rulings regarding the relatively esoteric subject of service life insurance and govern their affairs accordingly. Even their lawyers, many of whom are likely to be general practitioners, may not know that a military life insurance policy cannot safely be made a part of the division of the marital property. Indeed, it is likely that the result petitioners propose would create a trap for the unwary from which relief through a judicially imposed constructive trust would no longer be available regardless of the equities involved.

If divorcing spouses became aware of the difficulties of binding a serviceman to maintain his life insurance in effect for his children or ex-wife, they might find it impossible to deal effectively with the policy as an asset in any division of the marital property. The insurance would have little value for the dependents because they would have no guarantee that their designation as beneficiaries would be maintained. It would also be useless to the serviceman if he had no other family members who were dependent on him for support. Thus a serviceman who intended in good faith to provide life insurance for the benefit of his children might nevertheless be required to purchase a new policy from a private insurer in order to provide acceptable assurance to his ex-wife and her attorney that his expressed intention would in fact be carried out.

Even more difficult to follow is petitioners' suggestion that the decision below will increase the administrative burdens of the private insurance companies like Prudential in carrying out the Servicemen's Group Life Insurance program. Petition, p. 8. Neither respondents nor the Maine Supreme Court have suggested that Prudential could not safely pay the beneficiary designated by the deceased serviceman as indicated by the forms in its possession and thus fully discharge its liability under the policy. Indeed, this has always been the rule even where military life insurance was not involved.

> So far as the insurance company is concerned, the one entitled to the proceeds of a policy, upon its accrual as a liability of the company, is the person named at the time as the beneficiary of the policy in accordance with the company's rules and regulations.

> That is an entirely different matter than the question which this litigation presents. Hundertmark v. Hundertmark, 372 Pa. 138, 93 A.2d 856, 859 (1952). See also Simonds v. Simonds, 45 N.Y.2d 233, 380 N.E.2d 189, 192 (1978).

The only conceivable burden which the insurance company could be required to assume would arise in those cases in which, as in the case at bar, it was made subject to court-ordered restraint on making payment before it had turned over the policy proceeds. In those few cases, it can avoid the necessity of resolving the multiple claims for payment by interpleading the contesting parties and paying the insurance proceeds into court. The cost of this relatively simple proceeding can legitimately be passed on to the policy-holders in the form of increased premiums. Moreover, the nominal expense involved is amply justified as a means of preventing the unjust enrichment of persons seeking to reap a windfall benefit from the misconduct of the insured.

Finally, it should be noted that the decision of the court below does not adversely affect the right of an insured serviceman to change the beneficiary of his service life insurance policy at any time. Except in cases where the serviceman is attempting to defraud another who has bargained for an interest in the policy proceeds, the named beneficiary will retain them. It is incredible to suppose that Congress intended that the protection afforded to its servicemen would extend to cases of this kind. Indeed, Congressional action taken to liberalize rules for subjecting federal employees to state legal process for collecting alimony and support payments, discussed above, clearly indicates that Congress had little patience with servicemen such as Richard Ridgway who attempt to avoid their legal and moral obligations to support their children and ex-wives.

In setting a standard for determining when it will intervene in a conflict between state family law and federal statutes, this Court has stated that it would limit review under the Supremacy Clause to:

> . . . a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. . . . A mere conflict in words is not sufficient. State

> family and family-property law must do "major damage" to "clear and substantial" federal interests before the Supremacy Clause will demand that state law be overridden. Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) at p. 808 of 99 S.Ct.

Since no federal policies are violated by the decision of the Maine Supreme Court from which this appeal is taken, this standard plainly has not been met.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

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Counsel for Respondents

Office-Supreme Court, U.S.
FILED
FEB 14 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1070

In the Supreme Court of the United States

OCTOBER TERM, 1980

DONNA RIDGWAY AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONERS

v.

HAYLEY D. RIDGWAY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1070

DONNA RIDGWAY AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONERS

v.

HAYLEY D. RIDGWAY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTION PRESENTED

Whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy for the benefit of the children of a deceased serviceman's first marriage, where the serviceman, in violation of the terms of a divorce decree requiring him to name the children as beneficiaries, designated his second wife as the policy beneficiary.

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INTEREST OF THE UNITED STATES

This case concerns the application of a federal statute, the Servicemen's Group Life Insurance Act of 1965 ("SGLI Act"), 38 U.S.C. 765 *et seq.*, and its implementing regulations to a state court's treatment of the proceeds of an SGLI policy. The SGLI Act authorizes the Administrator of the Veterans Administration to purchase from qualified commercial insurers group life insurance policies insuring the lives of members of the uniformed services. 38 U.S.C. 766. While designated companies such as petitioner Prudential Insurance Company, the current designee, are to administer the policies they issue and make the benefit payments under them, the Administrator has overall responsibility for the proper implementation of the SGLI Act and has promulgated regulations to that end. See *Shannon* v. *United States*, 417 F.2d 256, 259-261 (5th Cir. 1969). The Act and implementing regulations specify how beneficiaries are to be determined and protect payments to beneficiaries from attachment, levy, or seizure. The United States has an interest in assuring that state court decrees governing the disposition of payments to policy beneficiaries do not conflict with the express terms and underlying policies of the Act.

STATEMENT

Richard Ridgway, a Sergeant in the United States Army, was the insured under a $20,000 life insurance policy issued by petitioner Prudential Insurance Company pursuant to the Servicemen's Group Life Insurance Act of 1965, 38 U.S.C. 765 *et seq.* (Pet. App. 28). Sgt. Ridgway's first marriage ended in divorce in December 1977. The divorce decree, which was entered following property settlement negotiations with respondent April Ridgway, his first wife, ordered him "to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children" and to replace the policies with other insurance should any of them "be terminated for any reason" (*ibid.*).

In 1978, Sgt. Ridgway married his second wife, petitioner Donna Ridgway. On April 3, 1978, contrary to the divorce decree, he changed the beneficiary designation of his SGLI policy, directing that the proceeds be paid as specified "by law." This meant that the statutory order of precedence in 38 U.S.C. 770(a) was to be followed; under that provision, the policy proceeds would be paid to Sgt. Ridgway's widow (Pet. App. 28).

Following Sgt. Ridgway's death in 1979, both April and Donna Ridgway filed claims with Prudential for the proceeds of the SGLI policy. April predicated her claim on the divorce decree and Donna claimed the proceeds on the basis of Sgt. Ridgway's policy designation and her status as his widow (Pet. App. 28). April Ridgway thereafter filed suit in state court against Prudential, on behalf of her children, seeking a preliminary injunction barring Prudential from paying the proceeds to Donna, a declaratory judgment that the proceeds belonged to her children, and the imposition of a constructive trust on the proceeds for the benefit of her children (*id.* at 28-29). Donna Ridgway was joined as a party to the suit (*id.* at 29).

The court rejected April Ridgway's claims, concluding (Pet. App. 30-32) that, under the terms of the SGLI Act, Sgt. Ridgway was not barred by the divorce decree from designating his second wife, Donna, as his beneficiary, and that imposing a constructive trust on the proceeds payable to Donna would impermissibly conflict with federal law, which gave Sgt. Ridgway the right freely to change his beneficiary and which required that the proceeds go to that beneficiary.

On appeal, the Supreme Judicial Court of Maine reversed (Pet. App. 16-25). It held that because Sgt. Ridgway had agreed to name the children as his beneficiaries and because he was obligated to maintain them as beneficiaries under a state court decree, the court should impose a

constructive trust on the insurance proceeds for the benefit of the children. The court concluded (*id.* at 21, 22-23) that this relief would not interfere with the federal policy of permitting an insured to change the beneficiary at any time because Sgt. Ridgway had voluntarily agreed to make an irrevocable beneficiary designation, and it further held (*id.* at 21) that the anti-attachment provision in 38 U.S.C. 770(g) did not bar the imposition of the trust because the provision applied only to the claims of creditors. The court acknowledged (Pet. App. 21-22) that this Court had held in *Wissner* v. *Wissner*, 338 U.S. 655 (1950), that the proceeds of a National Service Life Insurance policy, issued under a federal program similar to SGLI, could not be reached by a wife claiming under state community property law where the serviceman had designated his mother as beneficiary, but it distinguished that case as inapplicable where marital support obligations are concerned.

DISCUSSION

1. In 1979, approximately 3.1 million individuals were covered by insurance policies issued under the Servicemen's Group Life Insurance Act of 1965, 38 U.S.C. 765 *et seq.* See *1979 Veterans Administration Annual Report* 53 (July 1980). Insured service members live in all 50 states. Hence, the question whether the provisions of the SGLI Act and implementing regulations concerning designation of beneficiaries and attachment of policy proceeds are a bar, under the Supremacy Clause, to a state court's imposition of a constructive trust on such proceeds is an important and recurring one.[1] As we explain below, the answer given by the Maine Supreme Judicial Court is at odds with decisions of other state and federal courts, and it is likely to serve as

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[1]As petitioners note (Pet. 9-10) an Alabama state court is at present holding a similar case pending this Court's disposition of the petition in this case. *Nixon* v. *Prudential Insurance Co. of America*, No. CV-80-501-044 WCB (Ala. Cir. Ct., proceedings stayed Oct. 2, 1980).

an incentive for others in the position of April Ridgway to assert claims in derogation of the service member's choice of beneficiary. Absent guidance from this Court, the question is likely to continue to lack a uniform resolution. A definitive answer is needed by the company that now issues and administers these policies and others that might do so in the future,[2] by the VA, which oversees the program, by insured service members, who may otherwise be uncertain of the practical effect of their beneficiary designations, and by couples negotiating divorce settlements in which SGLI policies are involved.

2. In our view, the judgment of the Maine Supreme Judicial Court conflicts with federal law governing payment of the proceeds of SGLI policies and it should, accordingly, be reversed.

First, the express language of the SGLI Act plainly dictates that the policy proceeds be paid to Donna Ridgway, the statutory beneficiary, and that they not be diverted to someone else claiming them under state law. The statute provides that insurance benefits under an SGLI policy must be paid, "upon the establishment of a valid claim therefor, to the person or persons surviving at the date of [the service member's] death" in a specified "order of precedence." 38 U.S.C. 770(a). Benefits are to be paid first "to [such] beneficiary or beneficiaries as the member of former member

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[2]Although the Maine Supreme Judicial Court purported to reach the proceeds of the SGLI policy only after they had been received by the designated beneficiary (Pet. App. 21, 24-25), this precedent, if followed, can be expected to subject Prudential and other insurers to continued litigation. If a company pays the proceeds to the designated beneficiary and that person expends the funds before the person claiming under a divorce decree learns of the payment, the company might be sued for improper payment of the proceeds. See generally 5 *Couch on Insurance 2d* § 27:179 (1960). And if, as here, the person claiming under the decree learns of the impending payment before it is made, he would undoubtedly seek equitable relief against the company.

may have designated by a writing" received prior to the member's death at the appropriate office; if the service member has not made a written designation, the benefits are to be paid to the member's "widow or widower"; only if there are no beneficiaries under the first two categories are the benefits to be paid to the member's child or children. *Ibid.*

Moreover, proceeds payable to a beneficiary under 38 U.S.C. 770(a) are given express statutory protection from attachment under any type of judicial decree. Pursuant to 38 U.S.C. 770(g), payments of policy proceeds "shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure *by or under any legal or equitable process whatever*, either before *or after* receipt by the beneficiary" (emphasis added). Thus, under the statutory scheme, where the serviceman has not designated a beneficiary, Congress has made the choice of giving the proceeds to his children only if there is no surviving widow, and where the serviceman has designated a beneficiary pursuant to applicable regulations (or where a beneficiary is designated by operation of law), the payments to that beneficiary cannot be reached by other persons under legal or equitable process of any kind. In this case, therefore, because Sgt. Ridgway properly designated Donna as his beneficiary by directing that the insurance proceeds be paid as specified "by law," the court below erred in imposing a trust on the proceeds for the benefit of his children.

The VA has consistently construed the SGLI statute as mandating payment of policy proceeds to the beneficiary selected by the insured and properly registered under applicable procedures, notwithstanding any contrary terms of divorce settlements, decrees, or other documents. Thus, pursuant to his authority under 38 U.S.C. 201(c)(1) to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration and are consistent therewith." the

Administrator of Veterans' Affairs has promulgated regulations providing, *inter alia*, that a "member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary" (38 C.F.R. 9.16(a)), that "[a] change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary" (38 C.F.R. 9.16(e)), and that "[n]o change or cancellation of beneficiary * * * in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office" (38 C.F.R. 9.16(f)).

The Maine Supreme Judicial Court implicitly recognized that, given the terms of the SGLI Act and related regulations, it lacked power to substitute Sgt. Ridgway's children as the statutory beneficiaries because he had registered a different choice of beneficiary with the appropriate office. It sought to achieve the same result, however, by impressing a constructive trust on the insurance proceeds and making Donna Ridgway the constructive trustee. The court thereby violated the express terms of 38 U.S.C. 770(g), the anti-attachment provision of the Act. The court holding (Pet. App. 21) that Section 770(g) is inapplicable because the children of Sgt. Ridgway's first marriage are not "creditors" is clearly wrong in light of the legislative history of that provision.

The anti-attachment provision, which was added to the statute in 1970 (Pub. L. No. 91-291, Section 5, 84 Stat. 331), originated in a House amendment to S. 1479, 91st Cong., 2d Sess. (1970). 116 Cong. Rec. 14004 (1970). Representative Teague, the amendment's sponsor, and Senator Talmadge, the bill's sponsor, each spoke of the provision as exempting proceeds from "taxation and claims of creditors," but both also made clear that they regarded it as the equivalent of the

anti-attachment provision (38 U.S.C. 3101(a)) that protected policy proceeds under the National Service Life Insurance Act program ("NSLI"), 38 U.S.C. 701 *et seq.* 116 Cong. Rec. 14004, 18723 (1970). (The NSLI program differs from the SGLI program in that the federal government is the insurer rather than a policyholder purchasing policies on behalf of service members from commercial insurers.) The VA had always construed the anti-attachment provision of 38 U.S.C. 3101(a) and its forerunner as barring any claims against proceeds that would be inconsistent with the serviceman's designation of beneficiary, notwithstanding any contrary divorce decree or property settlement, and most decided cases followed that rule. See, *e.g.*, *Bonner* v. *United States*, 222 F. Supp. 539 (D. Mass. 1963); *Eldin* v. *United States*, 157 F. Supp. 34 (S.D. Ill. 1957); *Heifner* v. *Soderstrom*, 134 F. Supp. 174 (N.D. Iowa. 1955); Annot., 13 A.L.R. Fed. 6, 26 *et seq.* (1972 & 1980 Supp.) (collecting cases).[3] See also *Wissner* v. *Wissner*, 338 U.S. 655, 659 (1950) (construing the NSLI anti-attachment provision as barring serviceman's wife, claiming under community property law, from reaching policy proceeds to be paid to the designated beneficiary).[4]

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[3]The D.C. Circuit has suggested that the execution of a property settlement agreement might serve to block a subsequent change of NSLI beneficiary, but this statement was dictum, and the court acknowledged that the weight of authority was to the contrary. *Suydam* v. *United States*, 404 F. 2d 1329, 1331 (D.C. Cir. 1968).

[4]In *Wissner*, the Court acknowleged (338 U.S. at 660) that alimony and support claims posed a different question, but it declined to express any view on the question whether such claims could override the NSLI's anti-attachment provision. We note that in 42 U.S.C. (Supp. I) 659, Congress has permitted garnishment of federal benefits for alimony and child support obligations, notwithstanding the existence of anti-attachment provisions, but that waiver applies only to monies that are "payable by[] the United States or the District of Columbia" and for which "entitlement * * * is based upon remuneration for employment." Proceeds paid out by commercial insurers under the SGLI Act are thus unaffected by this provision.

The few reported cases involving the issue as it relates to SGLI policies also support petitioners' and the VA's position. In *Stratton* v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 (S.D. Iowa. 1976), and *Weymann* v. *Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970), the district courts held that a former wife claiming policy proceeds under a divorce decree similar to the one involved here was not entitled to the proceeds, where the service member had cancelled the designation of the former wife as beneficiary and had thus directed distribution according to the statutory order of precedence. See generally *Prudential Insurance Co. of America* v. *King*, 453 F. 2d 925 (8th Cir. 1971) (field of servicemen's life insurance has been preempted by federal law).

Both *Stratton* (422 F. Supp. at 1122) and *Weymann* (320 F. Supp. at 989) suggest that persons claiming under divorce decrees that embody property settlement agreements might have viable suits against the estates of their former spouses for breach of contract. We take no position on that question, and the Court need not reach it in this case.[5] The court below did not have such a suit before it; rather, it impressed a trust on the very proceeds that Prudential was to pay Donna Ridgway pursuant to the express

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[5]Courts construing the statute under which NSLI policies are issued have divided on the question whether such breach of contract suits are consistent with that federal statutory scheme. Compare, *e.g.*, *McJunkin* v. *Estate of McJunkin*, 493 S.W. 2d 278 (Tex. Civ. App. 1973), with *Will of Hilton*, 88 Misc. 2d 760, 388 N.Y.S. 2d 985 (Surr. Ct. 1976).

We note that a suit against the estate of a service member would not necessarily involve a policy beneficiary even indirectly, since beneficiaries need not be heirs to the estate and since payments of SGLI policy proceeds are made directly to the designated beneficiary and not to the executor of a service member's estate. *Bader* v. *Administrator of Veterans Affairs*, 470 F. Supp. 1240, 1243 (D.N.J. 1979).

terms of the SGLI Act. Because this result conflicts with federal law, the judgment below is invalid under the Supremacy Clause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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No. 80-1070

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

PETITIONERS' BRIEF

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May 22, 1981

QUESTION PRESENTED FOR REVIEW

Whether the Supremacy Clause of the U.S. Constitution and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy for the benefit of the children of the deceased serviceman's prior marriage, where a state court divorce decree required him to designate the children as beneficiaries, and he subsequently designated another.

PARTIES

The names of all parties to the proceedings in the Supreme Judicial Court of Maine are set forth in full in the caption of the Petition for Writ of Certiorari. As docketed by the Clerk of this Court, the named parties are Donna Ridgway and (The) Prudential Insurance Company of America, Petitioners, and Hayley D. Ridgway, et al., Respondents. The additional Respondents are Hayley D. Ridgway's minor siblings, Laurie R. Ridgway and Brady L. Ridgway, all acting by and through their mother and next friend, April D. Ridgway.

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CITATION TO OPINION AND JUDGMENT BELOW

The Opinion and Judgment of the Supreme Judicial Court of Maine: 419 A.2d 1030 (Me. 1980)

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3). The judgment of the Supreme Judicial Court of Maine was entered on September 26, 1980, and the Petition for Writ of Certiorari was timely filed on December 23, 1980, pursuant to Rule 28.2 of the Rules of the Supreme Court of the United States. This Court's Order granting the Petition for Writ of Certiorari was filed on March 9, 1981.

CONSTITUTIONAL PROVISION INVOLVED

This Constitution, and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land; and all the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

...

U.S. CONST., art. VI,cl.2.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The provisions of 38 U.S.C. §§ 717(a), 766, 770, and 3101(a), and 38 C.F.R. §§ 9.1(h), 9.1(j), 9.16, 9.17, 9.20, 9.22(a) and 9.22(d) are set forth in the Appendix hereto.

STATEMENT OF THE CASE

Pursuant to 38 U.S.C. § 766, the Administrator of Veterans' Affairs purchased Servicemen's Group Life Insurance Policy No. G-32000 from The Prudential Insurance Company of America (hereinafter Prudential) effective September 29, 1965. The policy at issue was most recently amended on September 29, 1974. It is

specifically identified in the regulations adopted pursuant to 38 U.S.C. § 766. *See* 38 C.F.R. § 9.1(h).

Richard Ridgway, a career Army Sergeant, was insured under this Servicemen's Group Life Insurance (SGLI) policy for $20,000.00. Prior to his December 7, 1977, divorce from his first wife, April, Sergeant Ridgway had designated her as the beneficiary of that policy. The divorce decree provided, in relevant part:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, Defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

(A. 14).

On March 28, 1978, Richard married Donna Ridgway. On April 3, 1978, Richard changed the beneficiary designation on the SGLI policy to direct that the proceeds be paid as specified "by law" and therefore to his wife at the time of his death. 38 U.S.C. § 770(a); 38 C.F.R. § 9.16(i). Following Sergeant Ridgway's death on January 5, 1979, both April Ridgway and Donna Ridgway filed claims under the policy.

Faced with the stated intention of the private insurance carrier to pay the policy proceeds to Donna, April Ridgway then instituted an action on behalf of her three children against Prudential in the Superior Court of Maine for Androscoggin County (A. 11). Donna subsequently joined the action voluntarily as a Plaintiff (A. 23, A. 24). Following consolidation of a preliminary injunction hearing with a final hearing on the merits (A. 38), the case was submitted to the trial court on stipulated facts. The Supremacy Clause question presented here was specifically raised as an affirmative defense in the trial court in Donna's Answer (A. 34), and fully briefed by all parties in the state trial and supreme courts.

The superior court ruled that federal law gave the insured serviceman an absolute right to designate or change the beneficiary of his SGLI policy, and that the Supremacy Clause of the federal constitution accordingly required payment of the proceeds to Donna despite the conflicting state court divorce decree. The superior court specifically refused to consider imposition of a

constructive trust on Donna, as sought by April, holding that it was powerless to consider this remedy under the Supremacy Clause and the subject federal statute (A. 42).

On appeal by April, the Maine Supreme Judicial Court reversed, holding that by granting servicemen the absolute right to select their beneficiaries, 38 U.S.C. § 770(a) did not embody a federal interest sufficient to constitute pre-emption; that the anti-attachment provisions of 38 U.S.C. § 770(g) did not apply to this case since the equitable interest claimed by Sergeant Ridgway's minor children did not amount to the claim of a "creditor;" and that the federal statute and regulations did not "prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children." 419 A.2d 1030, 1033. The Maine court declared:

> In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decree of our state courts.

419 A.2d at 1035.

As previously stated, the superior court had ruled that the Supremacy Clause precluded consideration of a constructive trust without indicating whether it would have imposed such a trust had it the power to do so. On appeal, the stipulated sole issue before the Maine Supreme Court was whether the superior court justice had "erred in ruling that, on the basis of the facts found, he *could not* impose a constructive trust on the proceeds of Sergeant Ridgway's insurance." (A. 48) (emphasis supplied). Holding that nothing in the literal language of the statute, the legislative history or the case law prohibited the imposition of a constructive trust, the Maine Supreme Court chose not to remand to the superior court with instructions to re-evaluate the case in light of this potential remedy it had declared to be available. Rather, it established the trust on its own initiative and remanded with directions to issue an order imposing a constructive trust on the policy proceeds, 419 A.2d at 1035, thus pre-empting further consideration by the trial court.

SUMMARY OF ARGUMENT

I. The federal statute by which the Servicemen's Group Life Insurance (SGLI) program was established sets forth an unequivocal order of precedence by which policy benefits are to be paid, unless the serviceman has made an express beneficiary designation. Regulations adopted in furtherance of the statute emphasize that absolute adherence to the prescribed requirements for beneficiary designations is mandatory. Cases decided under the SGLI statute, in which the insurer is a private carrier, emphasize strict compliance with the statutory and regulatory requirements for beneficiary designations to a greater degree than did prior programs under which the government was the insurer.

Both current and prior military life insurance programs insure that the properly designated beneficiary will receive the policy proceeds and retain them free from collateral attack. 38 U.S.C. § 770(g); 38 U.S.C. § 3101(a). All the requirements for a proper beneficiary designation having been met in this case, the policy proceeds should be paid to the statutorily prescribed beneficiary, Donna Ridgway.

II. Under the Supremacy Clause, federal statutes and regulations adopted pursuant to a power expressly granted to Congress will pre-empt inconsistent state action. The SGLI statute does not state that conflicting state action is precluded. However, an examination of the clear statutory language makes it obvious that state action inconsistent with the federal statutory and regulatory provisions governing SGLI constitutes an impermissible obstacle to the "full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67(1941).

This Court, in *Wissner v. Wissner*, 338 U.S. 655 (1950) held that a state community property claim against the proceeds of an earlier, similar form of military life insurance (National Service Life Insurance or "NSLI") was not a sufficient basis to enforce a divorce decree requiring payment of the proceeds to one other than a beneficiary correctly designated under the federal statute. The federal statute was then held to pre-empt the conflicting divorce decree. Whether a state court order founded on considerations of alimony or child support would constitute a sufficient basis to avoid pre-emption was expressly left open in *Wissner*. Such a proposition should be rejected by this Court. The plain

SGLI wording mandating the order of precedence for payment, and the sweeping protection of the statutory spendthrift provisions, compel the conclusion that the federal program at issue here pre-empts conflicting state action such as the divorce decree below. Recent actions by this Court and Congress bearing on other forms of federal employee benefits are consistent with strict construction of the federal statute and regulations governing military life insurance, and pre-emption of inconsistent state action. E.g., *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979).

III. The mandate of the Maine Supreme Court, by imposing a constructive trust on the SGLI proceeds in the hands of the designated beneficiary, constitutes token acknowledgment that the insurer has correctly paid the nominal beneficiary, but circumvents the statutory objective by awarding the ultimate benefit of the proceeds to others. This judicial intrusion into the federal military insurance program frustrates both the objectives of Congress and the intent of the deceased serviceman. No reported case has been discovered where a constructive trust has been imposed on proceeds of either the present SGLI or earlier NSLI policies to effect a result contrary to that intended by the insured serviceman. This Court should reject the aberrant use of this equitable device by the Maine court, as it will inevitably lead to a flood of litigation ensnaring not only the individual claimants but also the insurer, whether before or after payment to the designated beneficiary.

ARGUMENT

I. FEDERAL LAW REQUIRES THAT A PROPERLY COMPLETED SGLI BENEFICIARY DESIGNATION BE STRICTLY HONORED

The trial justice below correctly ruled that under the federal law governing SGLI policies (38 U.S.C. §§ 765 et seq.), and the regulations promulgated thereunder, the insured serviceman is given "the absolute right to designate any person or legal entity as beneficiary of his life insurance policy" (A. 41). The justice found that the state court divorce decree requiring payment to the minor children was inconsistent with the absolute right conferred by federal statute, and subordinate to the federal law. In so ruling, the court specifically found that "[f]ederal law gives Donna Ridgway a legal right to the proceeds of this insurance policy. The equitable power of the Court cannot interfere with this positive federal law by imposing a constructive trust." (A. 42). (citing *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970)).

In reversing the trial court, the Maine Supreme Court relied solely on cases involving private insurance contracts to support its creation of a constructive trust, undoubtedly because there are no federal military life insurance cases which support its ruling. In a number of private insurance cases, courts have intervened to overturn a decedent's beneficiary designation and have imposed a constructive trust on the beneficiary and/or the insurance proceeds where the insured's beneficiary designation contravened a requirement of a property settlement agreement or divorce decree. *See, e.g., McKissick v. McKissick*, 93 Nev. 139, 144, 560 P.2d 1366, 1369 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, 237, 380 N.E.2d 189, 191, 408 N.Y.S.2d 359, 361 (1978); *Richards v. Richards*, 58 Wis. 2d 290, 298, 206 N.W.2d 134, 138 (1973). All these private life insurance cases are inapposite in the context of military life insurance for the reasons discussed below.

A. History of Military Life Insurance

Provision of some form of life insurance has been a part of the federal program of benefits for its service personnel for many years, having been in existence at least as long ago as World War I when it was called U.S. Government Life Insurance (USGLI) or

War Risk Insurance. E.g., *United States v. Williams*, 302 U.S. 46 (1937); *Kaschefsky v. Kaschefsky*, 110 F.2d 836 (6th Cir. 1940); *Claffy v. Forbes*, 280 F. 233 (W.D. Wash. 1922). A similar program was offered during World War II and the Korean War era through a program known as National Service Life Insurance (NSLI) *see, e.g., Wissner v. Wissner*, 338 U.S. 655 (1950); *Burgess v. Murray*, 194 F.2d 131 (5th Cir. 1952).

Following the Korean War there was an interruption in military life insurance coverage; from 1957 to 1965 service personnel were not covered by any federal life insurance unless they had retained government life insurance issued prior to April 25, 1951. In 1965 Congress created the Servicemen's Group Life Insurance program by enactment of Pub. L. No. 89-214, 79 Stat. 880, codified at 38 U.S.C. §§ 765 et seq.

B. Comparison of National Service Life Insurance Act With Servicemen's Group Life Insurance Act

Although the Servicemen's Group Life Insurance Act (SGLIA) differs from the predecessor National Service Life Insurance Act (NSLIA) in that the government is no longer the insurer, the provisions of each act conferring upon the serviceman an absolute right to designate and change beneficiaries are nearly identical. 38 U.S.C. § 717(a) of NSLIA, like § 770(a) of SGLIA,[1] confers that right in express terms. Additionally, § 770(a) provides an order of precedence of beneficiaries in the absence of an effective designation. The absolute nature of the serviceman's right to control the proceeds of his policy under each act is further guaranteed under substantially identical provisions, 38 U.S.C. § 3101(a) for NSLI, and § 770(g) for SGLI.

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[1] 38 U.S.C. § 770(a): Beneficiaries - Payment of insurance - (a) Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's

§ 3101(a)

Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments *made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.* The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited (emphasis supplied).

§ 770(g)

Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance *made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.* The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments (emphasis supplied).

Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

SGLI differs from past military insurance programs in that under SGLI the government is not directly the insurer. Under the SGLI form of insurance, the Administrator of Veterans' Affairs is empowered to contract with a qualified primary commercial insurer for a group life insurance policy. Group Policy G-32000 is such a policy. 38 C.F.R. § 9.1(h). The commercial insurer administers the program under the supervision of the Veterans' Administration. 38 U.S.C. § 766(b); 38 C.F.R. § 9.1(j), § 9.22(a), § 9.22(d) (1975).

A second and critical distinction between SGLI insurance and prior military life insurance is the congressional intent, as construed in judicial review of the legislative history, to overrule prior administrative policy toward previous forms of military insurance. That policy historically permitted liberal construction of rules governing the designation or change of beneficiaries. *Senato v. United States*, 173 F.2d 493 (2d Cir. 1949); *Bew v. United States*, 286 F.2d 570 (4th Cir. 1961). *See generally*, Annot., 13 ALR Fed. 6, § 10 (1972).

Since the advent of SGLI insurance, managed by a private carrier, strict compliance with procedural requirements has been the rule. The lower courts have recognized that the congressional intent behind this policy change was "to avoid thrusting upon the private insurance carriers undue administrative burdens." *Stribling v. United States*, 419 F.2d 1350, 1354 (8th Cir. 1969). Regulations implementing the legislation emphasize the absolute finality of a properly executed SGLI beneficiary designation. 38 C.F.R. § 9.16(a),(f). "Congress determined that such regulations were necessary to make the Servicemen's Group Life Insurance program administratively feasible, and the Court is not in a position to question that wisdom." *Stratton v. Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119, 1122 (S.D. Iowa 1976).

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death.

C. Strict Beneficiary Designation Requirements Emphasized by SGLI Regulations

To effectuate the congressional intent that the strict procedural requirements of 38 U.S.C. § 770 be absolutely determinative of parties' rights under SGLI policies, the Veterans' Administration adopted a stringent set of regulations. They emphasize in detail the necessity of strict adherence to the statute, and the finality of a beneficiary designation prepared and filed in accordance with the statute and regulations. Subsection (d) of 38 C.F.R. § 9.16 sets forth the fundamental requirements for proper designation of an SGLI beneficiary:

> (d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty...

Subsection (e) of the regulations emphasizes the absolute discretion in the insured serviceman to make and change beneficiaries:

> (e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.
>
> 38 C.F.R. § 9.16(e)

The regulations stress that only properly executed and received documents will be effective to change a beneficiary designation:

> (f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.
>
> 38 C.F.R. § 9.16(f)

D. Legislative Intent

The Maine court has given its own narrow reading to the legislative history, seizing upon one statement by the Administrator of Veterans' Affairs, when the Senate Finance Committee and the House Veterans' Affairs Committee were considering separate military life insurance proposals (ultimately consolidated into the SGLIA) Pub. L. No. 89-214, § 1(a), 79 Stat. 880-885 (1965), and codified in 38 U.S.C. §§ 765-776. The Maine court cited a portion of the Administrator's statement which pointed out how the pending House bill (H.R. 10873) would remedy certain deficiencies in military benefit programs which then existed in lieu of life insurance. [1965] U.S. Code Cong. & Ad. News 3232, 3242, 3243. These remarks were in no way directed toward the beneficiary designation provisions of the proposed legislation, which the Administrator affirmatively stated "would be payable to the designated beneficiary or beneficiaries selected by the insured." *Id.* p. 3242.

Nonetheless, the Maine court construed the Administrator's comments as defining the *only* purposes of the legislation, reading the legislative history of the Servicemen's Group Life Insurance Act to disclose only limited objectives—to make life insurance available to servicemen without war exclusion clauses, to make survivorship benefits available to parents of deceased servicemen without the necessity that the parents meet a "needs" test, and to permit servicemen to provide protection for other individuals without any showing of dependency. 419 A.2d at 1033. The court failed to note, however, numerous indications in the legislative history that a primary purpose of the Act was to give the serviceman the right to select his beneficiary, and to change that beneficiary without consent of any prior beneficiary. [1965] U.S. Code Cong. & Ad. News 3232, 3236, 3240, 3241-42, 3243. Thus limiting its consideration of the legislative history, the court below found no barrier to its imposition of a constructive trust for the benefit of parties other than the designated beneficiary.

This perspective on the legislative intent is not supported by a review of the legislative record and judicial decisions. In *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), the Court of Appeals reviewed the legislative history of the Servicemen's Group Life Insurance Act in comparison with the analogous Federal Employees' Group Life Insurance Act of 1954, Pub. L.

No. 598 ch. 752, 68 Stat. 736 et seq. as amended; 5 U.S.C. §§ 8701 et seq. The nearly identical language of the beneficiary designation sections of the two Acts was emphasized by the court, which then noted that the beneficiary designation section of the Federal Employees' Group Life Insurance Act (analogous to § 770(a) of SGLIA) was later amended to state specifically that designations, changes or cancellations of beneficiaries in wills or other documents not complying with the statutory requirements for execution and filing would be disregarded. The purpose of the amendment was "to clarify Congress' intent," 419 F.2d at 1354, quoting S. Rep. No. 1064, 89th Cong. 2d Sess., *reprinted in* [1966] U.S. Code Cong. & Ad. News 2070, 2071.

While finding no such express intent in the SGLIA as enacted, the Eighth Circuit held that the legislative intent underlying the parallel FEGLI legislation was properly transposable to an interpretation of the SGLIA. The court thus applied the strict construction requirements of the FEGLI statute to beneficiary designations made under the SGLIA. In so holding, the court was not constrained by the fact that Congress had not amended 38 U.S.C. § 770(a) contemporaneously with its amendment of the analogous FEGLI section. It rejected the contention that the absence of such an amendment to the SGLIA demonstrated congressional approval of a liberal construction policy in SGLIA beneficiary determinations. The court held that it was merely casting the same clarification of Congress' intent upon the SGLI Act, and held in favor of a strict construction of the beneficiary designation requirements of 38 U.S.C. § 770(a). 419 F.2d at 1355.

At the time *Stribling* was decided the regulations now embodied in 38 C.F.R. § 9 had not yet been adopted. They were published January 28, 1975. 40 Fed. Reg. 4135 (1975). Section 9.16(f) provides:

> (f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, *or in any other document* shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(Emphasis supplied)

Thus, the express language which the Eighth Circuit felt it did not require in order to rule in favor of strict statutory construc-

tion has since been added to the interpretive regulations under SGLI, eliminating any possible argument whether SGLI designations should be strictly or liberally construed.

Congress unequivocally confirmed the *Stribling* court's judgment by its enactment of 38 U.S.C. § 770(g) in a 1970 amendment. Pub. L. No. 91-291, § 5, 84 Stat. 331. In so doing, Congress affirmatively extended protection to SGLI benefits analogous to that already afforded NSLI benefits under § 3101(a). The NSLI cases had uniformly held that the provisions of § 3101(a) would bar a claim for policy proceeds which was contrary to the insured serviceman's express intent, even when the claim was predicated upon an alimony or support order in a divorce decree. E.g. *Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968); *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968); *Eldin v. United States*, 157 F. Supp. 34 (S.D. Ill. 1957); *see generally*, Annot., 13 A.L.R. Fed. 6, § 9 (1972 and Supp. 1980).

The Maine court's opinion attempts to rationalize the substantial body of SGLI cases holding that the serviceman's right to make and change beneficiary designations is absolute, if carried out in compliance with the applicable statutes and regulations. Its discussion of *Stribling, supra, Prudential Insurance Co. of America v. King*, 453 F.2d 925 (8th Cir. 1971), and *Johnson v. Prudential Insurance Co. of America*, 182 Neb. 673, 156 N.W.2d 812 (1968), attempts to relegate these authorities to a category of mere procedural definitions, ignoring their clear substantive import which establishes the unqualified certainty of a properly executed SGLI designation. The Maine court's opinion offers no citation to any case decided under NSLI or SGLI in which the serviceman's properly completed beneficiary designation has been construed contrary to his express intent. A careful reading of the statute and regulations will lead this Court inevitably to the conclusion that a properly completed SGLI beneficiary designation must be strictly honored.

II. SINCE FEDERAL LAW PRE-EMPTS THE FIELD, A CONTRARY STATE COURT DIVORCE DECREE MUST YIELD

The Supremacy Clause of the United States Constitution establishes the fundamental principle that

> This Constitution and the laws of the United States which shall be made in pursuance thereof... shall be the supreme law of the land... anything in the Constitution or laws of any State to the contrary notwithstanding.
>
> U.S. Const. art. VI, cl. 2

The Maine court's opinion acknowledges this premise: "There can be no question that Congress has the power fully to pre-empt the field when legislating pursuant to one of the express powers granted to it in the Constitution." 419 A.2d at 1031. The power to provide for the national defense is such an express Constitutional delegation. U. S. Const. art. I, § 8. The opinion below recognizes that the SGLIA was enacted pursuant to that expressly delegated congressional power. 419 A.2d at 1031. Although the constitutional mandate of authority over national defense is express, the SGLIA, enacted pursuant to that power, does not patently state that it pre-empts the field and precludes state action. Where federal pre-emption is not manifested by the wording of federal statutes or regulations, it may nonetheless be obvious from an examination of the federal-state setting in which the federal action was taken. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157-58 (1978), and cases cited therein. One test by which pre-emption may be found is whether a specific state action "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress". *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The Maine court determined that its action presented no such obstacle. 419 A.2d at 1034-35.

It is fundamental that, if possible, Congress' intent in enacting a statute is to be determined by a plain reading of the statute itself. *S & E Contractors, Inc. v. United States*, 406 U.S. 1, 13-14, n.9 (1972); *United States v. Oregon*, 366 U.S. 643, 648 (1961); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 390-395 (1951); *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543 n.18 (1940). Only if the legislative intent is not manifest from the statutory language is it necessary to consider secondary sources. The Maine court below ignored this fundamental principle of construction and the unequivocal language of § 770 of the SGLI Act, attempting to divine an implicit congressional purpose by extrapolation from a statement given for a limited purpose by one witness before a congressional committee. 419 A.2d at 1033.

This Court has yet to rule directly on the applicability of the Supremacy Clause to a case where an insured serviceman's properly executed military life insurance beneficiary designation is in direct disregard of a prior state court divorce order requiring the serviceman to name his children beneficiaries of the life insurance policy as part of his support obligation to them. In fact, the Court has not previously heard any case directly presenting substantive issues under SGLIA.

A. *Wissner v. Wissner*

In a case arising out of an NSLI policy, *Wissner v. Wissner*, 338 U.S. 655 (1950), this Court held that claims premised on state community property law could not defeat a serviceman's beneficiary designation. Such claims were held to conflict impermissibly with the NSLIA. The Court ruled that portions of the controlling federal statute give servicemen the absolute right to designate their beneficiaries; are a valid exercise of the federal congressional power over national defense; and displace contrary state property law. It further held that the spendthrift provisions of the Act (38 U.S.C. § 454a, now codified at 38 U.S.C. § 3101(a)) preclude state courts from ordering a serviceman's designated beneficiary to pay over proceeds to his widow.

In holding the asserted community property rights to be an insufficient basis for displacing the federal statutory provisions, this Court examined various state court decisions holding that provisions for exemption from attachment of the National Service Life Insurance Act and similar pensions and veterans' relief programs do not apply when alimony or support is in issue. The *Wissner* Court declined to engage in an extended discussion of those earlier cases from inferior courts, confining its ruling to the specific community property issue in the case before it, and finding that community property basis inadequate to overturn the beneficiary designation provisions established pursuant to the federal statute.

In its analysis, the Maine court noted the suggestion contained in *Wissner* that "a different result might obtain in cases involving alimony or support," 419 A.2d at 1033. The Maine opinion then set forth an excerpt from this Court's *Wissner* decision:

> [W]e must note that the community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit. [citation omitted] Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases.

419 A.2d at 1033, *quoting Wissner v. Wissner*, 338 U.S. at 660.

The opinion below omits the very next sentence of the *Wissner* opinion: "Our view of these cases, whatever it may be, is irrelevant here."

The *Wissner* Court continued, stating:

> And since the statute which made the insurance proceeds possible was explicit in announcing that the insured shall have the right to designate the recipient of the insurance, and that "No person shall have a vested right" to those proceeds, 38 U.S.C. § 802(i), appellee could not, in law, contemplate their capture.

338 U.S. at 661.

B. Pre-emption Applied to Other Federal Benefit Programs

In 1977, Congress enacted new Section 459 of the Social Security Act, 42 U.S.C. § 659, permitting attachment of certain benefits due from the United States or federal agencies to enforce alimony and child support obligations. In *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979), the 1977 amendment was held not to override the spendthrift provisions of the Railroad Retirement Act since the amendment defined alimony to exclude divisions of property between spouses.[2] The provisions of the Railroad Retirement Act therefore pre-empted state community property law. The 1977 amendment was limited to moneys "the entitlement to which is based on remuneration for employment" and to funds "due from or payable by, the United States or the District of Columbia," and so has no effect on SGLI benefits, which are neither based on

[2] 45 U.S.C. § 231m.

remuneration nor paid by the government.[3] By expressly authorizing the attachment of these specific forms of federal payments only, and by not acting to affect any other form of federal employment benefit, Congress implicitly recognized that all such benefits otherwise subject to federal spendthrift protection continued to be free from attachment notwithstanding the 1977 amendment.

As distinguished from the instant case, *Hisquierdo*, like *Wissner*, determines competing interests in federally created fringe benefits by invoking the pre-emption doctrine to reject a claim based on state community property law. *Hisquierdo* is nevertheless significant here because it holds the federally defined interest to pre-empt a competing claim founded on a state court decree.

While there may be a valid public policy permitting attachment of federal retirement benefits for alimony and child support purposes, the underlying federal policy considerations in providing military life insurance to servicemen free of restrictions on their beneficiary designations are of a substantially different and more compelling nature. The hazards of active military service are, without more, sufficient basis for offering benefits unique to servicemen, including the right to take absolute action to protect those who are the objects of the serviceman's financial preference. As this Court observed in *Wissner*:

> Certainly Congress in its desire to afford as much material protection as possible to its fighting force could wisely provide a plan of insurance coverage. Possession of government insurance, payable to the relative of his choice, might well directly enhance the morale of the serviceman. The exemption provision is his guarantee of the complete and full performance of the contract to the exclusion of conflicting claims. The end is a legitimate one within the congressional powers over national defense, and the means are adapted to the chosen end. The Act is valid.

338 U.S. at 661.

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[3]Although, unlike SGLI, NSLI benefits are paid by the government, presumably the 1977 amendment does not affect NSLI recipients since the proceeds are not based on remuneration. *See generally* Annot., 44 A.L.R. Fed. 434 (1979); Annot., 93 A.L.R. 3d 711 (1979).

The foregoing discussion of the pre-emption doctrine as applied to federal employee benefits is premised on a background of federal statutory spendthrift protection of those benefits. The Federal Employees' Group Life Insurance Act, 5 U.S.C. § 8701 et seq., is similar to the SGLIA in many respects but contains no spendthrift provision analogous to 38 U.S.C. § 770(g) or § 3101(a). One court has held that in the absence of such a statutory prohibition it was not precluded from imposing a constructive trust on the proceeds of a Federal Employees' Group Life policy in the hands of a beneficiary other than one mandated by a state court divorce decree. *Roberts v. Roberts*, 560 S.W.2d 438, *error ref. n.r.e.* (Tex. Civ. App. 1977).

C. Other Pre-emption Cases Concerning Military Life Insurance

Lower courts which have considered the beneficiary designation provisions have universally held that the federal SGLI statute and regulations will prevail over conflicting state law. *E.g., Johnson v. The Prudential Insurance Co. of America*, 182 Neb. 673, 156 N.W.2d 812 (1968). Federal statutes governing military insurance have uniformly been held to control disposition of the proceeds, notwithstanding contradictory state court divorce decrees. *Stratton v. Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 (S.D. Iowa 1976); *Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968); *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968); *see generally* Annot., 13 A.L.R. Fed 6, § 9 (1972 and 1980 Supp.).

In enacting the SGLI program, Congress not only provided for re-entry of the federal government into the servicemen's life insurance field; it pre-empted the field. *The Prudential Insurance Co. of America v. King*, 453 F.2d 925 (8th Cir. 1971); *Stratton v. Servicemen's Group Life Insurance Co., supra.* 38 U.S.C. § 770(a) clearly establishes the order of precedence for payment of SGLI benefits. By providing that the subject benefits be paid "by law," the decedent in this case achieved the effect of paying the benefits to his widow, in the absence of any other specifically designated beneficiary.

Although prior to the Maine court's decision below no case from a state court of last resort or federal court of appeals has considered the impact of a state court divorce decree on the serviceman's rights under the newer SGLI form of policy, cases

decided under the nearly identical NSLI statute clearly establish legislative intent to pre-empt any such interference. Decisions to date under the SGLI statute, while not reaching a divorce case, have carried forward without exception the rule of pre-emption laid down in NSLI cases. The decision of the Maine Supreme Court in this case conflicts in principle with cases decided under the earlier statute (including those passing on enforceability of an inconsistent divorce decree), as well as those cases decided to date under SGLI. The decision below creates uncertainty by refusing to apply precedent established in NSLI cases to a familiar fact pattern when presented under the newer SGLI statute.

Relying on the right-to-designate provisions of 38 U.S.C. § 717(a), the Ninth Circuit decided in *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), that a divorce decree requiring a husband to maintain his ex-wife as beneficiary under each of two NSLI policies impermissibly conflicted with the congressional intent to pre-empt such interference. The Court of Appeals for the District of Columbia concurred in *Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968), specifically rejecting a constructive trust theory like the one urged by Respondents here.

The Supreme Court of North Carolina reached a similar result even earlier in *Williams v. Williams*, 255 N.C. 315, 121 S.E.2d 536 (1961), reasoning that a state court divorce decree preventing the insured from designating anyone other than his ex-wife amounted to a prohibited assignment under 38 U.S.C. § 3101(a). In accord is *Fleming v. Smith*, 64 Wash. 2d 181, 390 P.2d 990 (1964), *aff'd* 69 Wash. 2d 277, 418 P.2d 147 (1966).

The rule of pre-emption sometimes works in favor of the former spouse. In *United States v. Donall*, 466 F.2d 1246 (6th Cir. 1972), although a Michigan statute and the serviceman's divorce decree both served to cut off his ex-wife's rights in any insurance policy, the Sixth Circuit ruled that the statutory beneficiary provisions of the NSLI policy pre-empted the inconsistent state law and decree, observing:

> It is well established that questions respecting the proper beneficiaries under NSLI policies are governed by federal law rather than state divorce law or state court divorce decrees.

466 F.2d at 1247. *Accord, Taylor v. United States*, 459 F.2d 1007 (9th Cir.), *cert. denied* 409 U.S. 967 (1972). The Sixth Circuit had ruled previously in a case involving United States Government Life Insurance that an insured veteran retained the right to change beneficiaries following divorce, and that a contrary state court decree amounted to an assignment prohibited by 38 U.S.C. § 3101(a). *Kimball v. United States*, 304 F.2d 864 (6th Cir. 1962). Assignment of SGLI benefits is similarly prohibited under 38 C.F.R. § 9.20.

In a few cases, the spendthrift provisions of 38 U.S.C. § 3101(a) have been extended to cases where an ex-spouse sues the insured's estate on a breach of contract theory, attempting to circumvent the many cases holding that an insured serviceman retains an absolute right to change beneficiaries. Courts which have considered this argument have divided on its applicability. *Compare McJunkin v. Estate of McJunkin*, 493 S.W.2d 278, *error ref. n.r.e.* (Tex. Civ. App. 1973); *Harris v. Harris*, 94 Idaho 358, 487 P.2d 952 (1971), *with Will of Hilton*, 88 Misc. 2d 760, 388 N.Y.S. 2d 985 (Surr. Ct. 1976).

The superior court in the present case suggested in dictum that April might have a cause of action against Richard's estate (A. 42). Although that remedy appears to afford one in April's position the most logical avenue for relief, the issue was not litigated in this action at either level below, and has not been preserved for review by this Court.

D. Pre-emption Reasoning of Maine Supreme Court

The Maine Supreme Court's opinion sidestepped the pre-emption issue entirely; it simply concluded that on the facts before it, the statutes and existing case law should not be read to create any conflict between the federal statutory and regulatory scheme and the requirements of the subject state court divorce decree. The court stated,

> We cannot see how imposing a constructive trust to enforce a valid judicial decree implementing the serviceman's voluntary agreement to name his minor children as the beneficiaries of his SGLI policy can in any way frustrate or impede the accomplishment of any legitimate federal objective. Nor do we find anything in the literal language of the statute or in its

legislative history which would prohibit such action. 419 A.2d at 1035.

The Maine court's conclusion on the pre-emption issue is predicated on its misapprehension that the congressional purpose underlying the SGLIA is not readily apparent from the statute itself. It held that in the absence of a constitutional grant of an express power to Congress, the question of federal pre-emption becomes a comparative exercise to determine whether the state action at issue "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." 419 A.2d at 1032, *quoting L. Tribe, American Constitutional Law*, 377 (1978); in turn *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Having concluded that no federal-state inconsistency existed, the Maine court held that the Supremacy Clause therefore presented no constraint on its action.

The direct response to the Maine court's holding on the pre-emption question is that the congressional intent on the issue of SGLI beneficiary designations is manifestly clear, requiring no detailed comparative study of the interrelationship between the federal statutory and regulatory system and the stated intent of the Maine Supreme Court to determine if the latter is an "obstacle" to the federal purpose. The words of § 770(a) and § 770(g), given their ordinary meaning, could not constitute a stronger statement for the unfettered right of an insured serviceman to designate whatever beneficiary he wishes (§ 770(a)), with the assurance that the proceeds of such insurance will be protected from "attachment, levy, or seizure by or under *any legal or equitable process whatever, either before or after receipt by the beneficiary*." § 770(g) (emphasis supplied). If it remained possible to doubt the congressional intent in view of the patent language of the statute, any such doubt would have been removed by the Veterans' Administration's adoption of § 9.16 of the regulations, captioned "Beneficiaries and options." If, as the *Stribling* decision suggests, Congress had been silent to that time regarding its intent in enacting certain SGLI provisions, that intent was expressed by the enactment of § 770(g) in 1970 and the adoption of 38 C.F.R. §§ 9.16(d), (e) and (f), *inter alia*, in 1975. Since each of these actions demonstrates a strong congressional intent that the serviceman's rights under SGLI remain unrestricted, and since the imposition of a constructive trust in this case totally

negates that freedom, the holding below that this state equitable remedy presents no "obstacle to the accomplishment and execution of the full purposes and objectives of Congress" defies logic. The ruling below clearly does frustrate the congressional intent, and must be reversed.

III. IMPOSITION OF A CONSTRUCTIVE TRUST WOULD THWART THE INTENT OF CONGRESS AND OF THE INSURED SERVICEMAN

Until the decision of the Maine Supreme Court below, no reported case has been found which approves the imposition of a constructive trust on the proceeds of SGLI insurance. The Maine court cited no SGLI case in support of its decision to impress this equitable remedy on the military insurance proceeds. Indeed, in the only reported SGLI case in which a constructive trust was one of the remedies sought, the court specifically refused to impose it. *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970). The district court's cryptic disposition of the prayer for such equitable relief unfortunately offers little insight into the rationale for its conclusion. *Id.* at 989.

A. Constructive Trust Remedy Limited to Private Life Insurance

Before the Maine Supreme Court, April pressed the argument that non-SGLI cases may be cited supporting imposition of a constructive trust on insurance benefits to effectuate a state court divorce decree. These cases fall into two categories. The first involves disputes between the first wife and children of a deceased insured and the second wife, all of whom claim entitlement to private contract life insurance proceeds. The weight of authority embodied in these cases supports the contention that a constructive trust may be imposed for the benefit of the children of the first marriage where the decedent has acted in violation of a valid state court divorce decree. However, a critical feature distinguishes those cases from that at bar; all of the cases cited by April arise out of private insurance contracts. *E.g., Equitable Life Assur. Soc. v. Wilkins*, 44 F. Supp. 594 (E.D. N.Y. 1942); *Great American Reserve Ins. Co. v. Maxwell*, 555 P.2d 988 (Colo. App. 1976); *Massachusetts Linotyping Corp. v. Fielding*, 312 Mass. 147, 43 N.E. 2d 521 (1942); *McKissick v. McKissick*, 93 Nev. 139, 560

P.2d 1366 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E. 2d 189 (1978); *Hundertmark v. Hundertmark*, 372 Penn. 138, 93 A.2d 856 (1952). Some of the contracts are group policies, and some individual, but none is a contract issued under authority of a federal statute and federal regulations implementing that statute, as is the case in this action. While these citations might be compelling in another context they are simply inapposite to the issue at bar.

The only case which even appears relevant to the issues presented here is *Gutierrez v. Madero*, 564 S.W.2d 185 (Tex. Civ. App. 1978). In that case, the original insurance policy on the decedent's life had been an SGLI policy. Gutierrez had converted his military policy to a private policy with similar benefits. When he and his wife were subsequently divorced, he was directed by the divorce decree to keep the private policy in force for the benefit of his three children, but later named his mother as beneficiary. His ex-wife sought to impose a constructive trust on the insurance proceeds and to obtain a judicial declaration that her children were entitled to the proceeds under the state court divorce judgment.

On appeal, a lower court ruling adverse to the minor children was reversed. In so ruling, the appellate court specifically predicated its decision on the holding that 38 U.S.C. § 770 was inapplicable where SGLI insurance had been converted to a private policy. The court refused to apply the specific exemptions from ancillary attack provided by 38 U.S.C. § 770(g) to successor private policies, and thus a constructive trust for the benefit of the minor children was ordered. Since the court's ruling makes it clear that imposition of this equitable device was possible only because the policy had been removed from the scope of the federal statutory coverage, the case has no direct relevance to the issues in this action, except as it implicitly supports the position taken by Donna and Prudential.

B. Two Constructive Trusts Imposed to Effect Serviceman's Express Intent

The second group of cases offered below by April concerns military life insurance (in each case NSLI coverage), but only two such decisions were cited. In each of these, *Voelkel v. Tohulka*, 236 Ind. 588, 141 N.E.2d 344, *cert. denied*, 355 U.S. 891 (1957),

and *Burgess v. Murray*, 194 F.2d 131 (5th Cir. 1952), a constructive trust was imposed on the proceeds of military life insurance in favor of persons other than the beneficiary technically designated by the insured. In both of these cases the correctly designated beneficiary refused to distribute the policy proceeds in accordance with the clearly expressed wishes of the insured, which had been fully documented in extrinsic writings.

Voelkel v. Tohulka involved a policy issued to a serviceman under the National Service Life Insurance Act of 1940. The defendant, a sister of the serviceman, had agreed that if her brother named her the beneficiary on his NSLI policy she would divide the proceeds among all his brothers and sisters, including herself. Following the sister's refusal to pay the proceeds in accordance with this agreement, the siblings demanded payment and requested that the court impose a constructive trust on the recalcitrant sister.

After reviewing the obvious unjust enrichment of the defendant who had acted improperly in refusing to pay the proceeds to her siblings, the court found the situation appropriate for utilization of a constructive trust. However, in doing so, it emphasized that it was imposing such a trust in order to carry out the intent of the deceased insured serviceman. The court held, "We see nothing in this section [38 U.S.C. § 454a] which indicates that Congress desired to prevent the raising of a trust *where it is done to carry out the deceased soldier's intent.*" 236 Ind. at 593, 141 N.E.2d at 346 (emphasis supplied).

Following its review of the controlling precedents, the *Voelkel* court reemphasized the critical importance of honoring the insured's dispositive intent before imposing a constructive trust. The court concluded,

> There appears no impediment in the National Service Life Insurance Act of 1940, 38 U.S.C. § 801, *supra*, directly opposing the imposition of a trust on funds after they are received by a beneficiary in the interest of a proper disposition of the proceeds *in comformity with the wishes of a deceased soldier*, if the facts exist which, under other principles of equity, would raise a trust.

236 Ind. at 595, 141 N.E.2d at 347 (emphasis supplied). On the facts of that case, the court then specifically imposed a construc-

tive trust on the sister.

Burgess v. Murray, 194 F.2d 131 (5th Cir. 1952) also arose out of dispute over distribution of proceeds of a National Service Life Insurance Policy. In that case the father of the insured serviceman was the designated beneficiary. Subsequent to designation, however, the insured had written a careful letter to his father stating that he wanted the father to hold any insurance proceeds for the benefit of the insured's children. After the serviceman died, the father also died before receiving any benefits under the policy. The insured's sister was paid partial benefits before a claim was filed on behalf of the insured's minor children. The district court found the letter from the serviceman to his father sufficient to change the beneficiary designation from the father to the insured's children. On appeal, the Fifth Circuit stated, "We are of the opinion that the decree of the lower court was in accord with the desire of the insured...." 194 F.2d at 132. In affirming the lower court decision, the court thus approved the utilization of a constructive trust specifically for the purpose of effecting the intentions of the insured.[4]

The Maine court cited with approval several of the private contract cases discussed in the first grouping above, 419 A.2d at 1031, but curiously omitted any reference whatsoever to the more relevant *Voelkel* and *Burgess* cases, which imposed constructive trusts only to effect the most recent statement of the servicemen's intent.

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[4]There have been additional cases arising under still earlier service life insurance contracts to the same general effect as the *Voelkel* and *Burgess* cases. E.g., *Kaschefsky v. Kaschefsky*, 110 F.2d 836 (6th Cir. 1940). In that case the Sixth Circuit approved a lower court decision in which it had been found that

> The deceased veteran, having done all that was within his power to do to effect the change in the beneficiary named in the insurance contract, the defendant, when he undertook to receive the payments due thereunder and to distribute them to the beneficiaries *intended by the deceased to receive them*, was acting as a trustee for the other beneficiaries. 110 F.2d at 837-38 (emphasis supplied). *See also Claffy v. Forbes*, 280 F. 233, 235 (N.D. Wash. 1922).

C. Intent of the Insured

In examining an NSLI case, *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), the Maine court distinguished the present case by pointing out that the *Hoffman* ruling upheld the beneficiary designation of a veteran "unwilling" to maintain his former wife as beneficiary, *Id.* 419 A.2d at 1034, whereas the court deemed Sergeant Ridgway to have been "not unwilling" because he had agreed in the divorce action to maintain his military life insurance in force for the benefit of his children.[5] Sergeant Ridgway's status thus distinguished, the court felt no constraint to imposition of a constructive trust on the insurance proceeds. This conclusion ignores the entire line of cases collected in Annot., 13 A.L.R. Fed. 6, § 9, in many of which the serviceman had first indicated his "willingness" by entering into a pre-divorce agreement with his spouse, but had later designated another beneficiary contrary to the agreement and divorce decree. Yet in all these cases in which a constructive trust was sought, the designated beneficiary prevailed and the demand for a constructive trust was specifically rejected. *E.g., Heifner v. Soderstrom*, 134 F. Supp. 174 (N.D. Iowa 1955); *Harris v. Harris*, 94 Idaho 358, 487 P.2d 952 (1971).

Of course, the imposition of such a constructive trust is totally at odds with the clear intent of the insured in the present case, even if the stringent standards governing SGLI beneficiary designations permitted imposition of constructive trusts in cases based on such policies. *See Stribling v. United States, supra.* Sergeant Ridgway had to be aware of the content of the divorce judgment requiring him to maintain life insurance policies in effect for the benefit of his minor children. He took deliberate action when, on April 3, 1978, he changed the prior beneficiary designation on his SGLI policy to make the proceeds payable "by law" and thus to his new wife, Donna. No further change of beneficiary designation was made on Sergeant Ridgway's policy from that date until his death several months later. The intent of the insured serviceman was thus clearly determinable as of April 3, 1978, and

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[5]No written property settlement agreement had been entered into by the parties, nor was any such agreement formally incorporated into the divorce judgment. Any such pre-judgment agreements were oral. *See Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968).

properly ascertained as of the date of his last valid beneficiary designation. Any "intent" he may have had in making prior designations or other previous commitments is irrelevant to the issues in this case. Since the imposition of a constructive trust on the proceeds of his SGLI insurance by the Maine Supreme Court directly contravenes Sergeant Ridgway's obvious intent, the decision below ordering this remedy should be reversed and the proceeds ordered paid to the properly designated beneficiary, Donna Ridgway.

D. Maine Precedent Invites Increased, Unproductive Litigation

In the Maine Supreme Court, April did not argue for the relief which she had sought in her original complaint against Prudential; that the insurer should be barred from paying the policy proceeds in any equitable or legal manner to Donna (A. 11). Rather, she limited her prayer to the constructive trust argument advanced in her cross claim against Donna and in Count II of her complaint against Prudential, filed as an amendment to the original complaint. She contended that while Prudential should not be precluded from paying the policy proceeds to Donna, the correctly named beneficiary, the imposition of a constructive trust on Donna and the proceeds should be accompanied by the court's order directing that the policy proceeds be paid to April.

Although nowhere affirmatively stated, the opinion of the Supreme Judicial Court of Maine implicitly acknowledges the statutory correctness of Prudential's action, and limits its consideration of an equitable remedy to one potentially directed against Donna. See, for example, its statement that a state court is not barred "from using its equitable power to reach the proceeds *in the hands of the statutory beneficiary.*" 419 A.2d at 1033 (emphasis supplied). Again, in a footnote, the Maine court discusses the imposition of a constructive trust "on the insurance proceeds *received by the designated beneficiary.*" 419 A.2d at 1034 (emphasis supplied).[6] Thus, by concession of April and indirect acknowledgement of the Maine court, the insurance carrier's payment to

[6]Although the Maine court imposed a constructive trust on the policy proceeds, it directed no equitable order to Donna Ridgway *in personam* as the proceeds had been paid into court prior to the state supreme court phase of the case. (A. 60).

the properly designated beneficiary has been recognized as correct. Prudential seeks this Court's confirmation that it has correctly discharged its obligations under the statute.

However, correct payment or proposed payment by the insurer to the properly designated beneficiary in no way limits the potential for litigation, as this case well illustrates. Absent a directive from this Court, an administrative decision by the insurer to pay the designated beneficiary and leave any aggrieved claimant to challenge the payee directly will continue to produce litigation among parties having various legal relationships with insured servicemen. See the cases filed since the Maine court's *Ridgway* decision, discussed *post* at pp. 30 - 32. The potential for such litigation is fueled by the contentious attitudes of contemporary American society.

It is not logical for the Maine court to suggest that the SGLI carrier may properly pay the designated beneficiary while at the same time guaranteeing, in effect, that substantial numbers of these payee-beneficiaries will become certain defendants in subsequent lawsuits brought by ex-spouses or other guardians of children of deceased servicemen. The inevitable litigation will enmesh the SGLI insurer both before or after payment to the properly designated beneficiary, with the predictable allegation (and accompanying punitive damage demands) that the carrier has, or is about to, intentionally and willfully pay the wrong party. Such involvement in litigation, whether well founded or not, will generate needless administrative costs ultimately reflected in premiums, and perhaps the unwillingness of private insurers to underwrite military life insurance at all.

IV. DONNA'S RIGHT TO RECEIVE THE POLICY PROCEEDS IS PROTECTED BY 38 U.S.C. § 770(g)

The Maine Supreme Court found the spendthrift provisions of 38 U.S.C. § 770(g) inapplicable, holding that equitable claims of the minor children did not amount to a claim by "creditors," an exception never recognized in the NSLI cases. Its ruling on this point is entirely unsupported by authority. This holding ignores the plain language of the statutory section which goes beyond a mere prohibition against creditors' claims. The sentence structure of the cited section is illuminating:

> Payment of benefits . . . shall be exempt from taxation, shall be exempt from the claims of creditors, *and* shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary.*

38 U.S.C. § 770(g) (emphasis supplied).

The section defines three separate classes of exemptions, set off by commas from each other, and clearly disjunctive. Creditors' claims are but one of the classes from which the proceeds are exempt. No stronger declaration of the serviceman's right to be free from all restraint can be imagined. The only exceptions to this statutory bar to claims against SGLI proceeds are those specifically enumerated in the next sentence of § 770(g):

> The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under Section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

By carving out only these three narrow exceptions to the general exemption from legal process defined by § 770(g), Congress has emphasized the universality of the exemption. Conspicuously absent from the listed exceptions are any references to alimony, child support, or contrary divorce decrees.[7] Other than the three foregoing narrow administrative exceptions, the exemption from ancillary process provided by § 770(g) is absolute, and all the comparable NSLI cases have so held.

An analgous attempt by an ex-wife to distinguish herself from the class excluded by another federal spendthrift provision was rejected by this Court in *Hisquierdo*. It should be noted that the spendthrift provision of SGLIA is even broader than that of the Railroad Retirement Act at issue in *Hisquierdo*. The latter protects federal pension benefits from "legal process" only, while 38

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[7] *Cf.* 5 U.S.C. § 8701; 42 U.S.C. § 659 (certain federal benefits subject to attachment to enforce alimony and support claims, see p. 16, *supra*); 11 U.S.C. § 523(a) (5) (alimony and support obligations not dischargeable in bankruptcy).

U.S.C. § 770(g) precludes both legal and equitable remedies. This distinction is important in light of this Court's observation in *Hisquierdo* that judicial constructions permitting diversion of federal benefits for purposes of support were "a child of equity, not of law." 439 U.S. at 586.

The ruling by the Maine Supreme Court below that the federal statute and regulations "do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children," 419 A.2d at 1033, circumvents federal law in a manner prohibited by *Wissner* and *Hisquierdo*. It employs the artifice of a constructive trust to direct payment of the insurance proceeds to the nominal beneficiary authorized by statute, but diverts the policy proceeds to others immediately upon receipt by the statutorily correct designee.[8]

V. RECENTLY FILED CASES EVIDENCE THE UNSETTLED STATE OF THE LAW FOLLOWING THE DECISION BELOW

Although lower courts have, prior to the instant case, universally upheld the insured serviceman's absolute right to designate his beneficiary under both NSLI and SGLI forms of military insurance, the competing demands of claimants whose cause is predicated on state court divorce decrees are being heard with increasing frequency and force.

There have been only two reported cases in which constructive trusts were imposed on the proceeds of National Service Life Insurance, (and only where necessary to effect the serviceman's intent; *Voelkel v. Tohulka* and *Burgess v. Murray, supra*) and no reported cases where the constructive trust remedy has been imposed on SGLI proceeds in contravention of a proper beneficiary designation. Prior to this case, the 15 year history under SGLI has produced no reported decisions by state courts of last resort or lower federal courts (other than a passing reference in

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[8]The California decision in *Milhan v. Milhan*, 13 Cal. 3d 129, 117 Cal. Rptr. 809, 528 P.2d 1145 (1974), *cert. denied*, 421 U.S. 976 (1975), threatened to undercut *Wissner* by giving a divorcing spouse an "offsetting" award of property to make up for the exclusion of service life insurance. That decision was disapproved by this Court in *Hisquierdo*, however.

Weymann v. Wilson, supra), in which the issue of a constructive trust to effectuate a state court divorce decree has been litigated.

Whether spurred by the recently reported decision by the Maine court in this case, or whether due to an increasingly litigious populace or whatever other reason, there has been a sudden outburst of cases nearly identical to the one at bar. When the Petition for Writ of Certiorari in this case was filed on December 23, 1980, there was pending *Nixon v. Prudential Insurance Co. of America* (Circuit Court, 10th Judicial Circuit of Alabama, Docket No. CV-80-501-044).[9] The court in that case entered an order on October 2, 1980, specifically staying further proceedings pending determination of the present case.

On December 26, 1980, counsel for Petitioners were informed that a case with facts virtually identical to this case had been filed in the United States District Court for the Northern District of Florida. It is *Helen Burks v. Prudential and the United States*, P.C.A. No. 80-0560. In that case, the divorced former wife of a serviceman insured under SGLI has brought an action against Prudential and the Department of the Air Force. She seeks to enforce a state court divorce decree which required the serviceman to designate and maintain his children as beneficiaries of his SGLI policy, notwithstanding his subsequent designation of another beneficiary (his new wife).[10]

Still more recently, on March 27, 1981, there was filed in the Superior Court for the County of San Bernadino, California an action entitled *Angela Ann Wichmann et al. v. Janie W. Wichmann and Prudential Life Insurance Co. of America* (Docket No. 202331). The complaint in that case alleges facts which again nearly duplicate those in the present case. In *Wichmann*, the parties had actually executed a property settlement agreement which was incorporated into the subsequent divorce decee, a condition not present in the instant case. The prayer for relief states that defendant Janie Wichmann would be a constructive trustee if the proceeds were to be distributed to her prior to order of court, and therefore seeks creation of an express trust by the court.

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[9]This case was noted in the Petition for Writ of Certiorari at p. 10.

[10]This case was identified to the Court in Petitioners' Supplemental Brief in support of their Petition for Writ of Certiorari.

Finally, on April 7, 1981, a case entitled *Barbara Jean Burk v. Prudential Insurance Co. of America* (Docket No. 81-33356-CK) was filed in the Circuit Court for the County of Kent, Michigan. (This action is totally independent of the recently filed Florida *Burks v. Prudential* case, *supra*, in which the plaintiff coincidentally has a nearly identical last name.) The only relevant difference between the fact pattern of the Michigan case and the instant case is that in *Burk* the serviceman failed to name his son as beneficiary of his SGLI policy, as required by the divorce decree, but took no affirmative action to designate his subsequent wife or anyone else. In the absence of a designation the SGLI proceeds are payable, on the serviceman's death, to the present wife under the order of precedence established under 38 U.S.C. § 770(a). Thus, the same legal effect is created as that brought about by Richard Ridgway's "by law" designation in the case at bar. Establishment of a constructive trust for the benefit of the minor child is expressly sought by Ms. Burk.

Since its decision in *Wissner* 30 years ago, this Court has denied certiorari in four NSLI cases and one SGLI case. In none of these was the pre-emptive effect of either federal act permanently undermined. *Voelkel v. Tohulka, supra*, applied a constructive trust to effectuate the serviceman's intent, thus enhancing rather than restricting his rights under federal law. The Fifth Circuit in 1967 ruled that state law gave the guardian of an incompetent serviceman power to change his ward's beneficiary, turning to state law for a rule of decision where the federal act offered no guidance. *Roecker v. United States*, 379 F.2d 400 (5th Cir.), *cert. denied sub nom. Tighe v. Roecker*, 389 U.S. 1005 (1967). In 1972, the Ninth Circuit held that the NSLI statute pre-empted a divorce decree purporting to divest the serviceman's ex-wife of any interest in his estate or any property owned by him. *Taylor v. United States*, 459 F.2d 1007 (9th Cir.), *cert. denied*, 409 U.S. 967 (1972). The California decision in *Milhan v. Milhan*, 13 Cal. 3d 129, 117 Cal. Rptr. 809, 528 P.2d 1145 (1974), *cert. denied*, 421 U.S. 976 (1975), threatened to undercut *Wissner* by giving a divorcing spouse an "offsetting" award of property to make up for the exclusion of service life insurance. That decision was disapproved by this Court in *Hisquierdo*, however. Another California case, this time under the SGLI statute, held that a divorcing serviceman did not demonstrate intent to change the beneficiary of his existing SGLI policy by naming his mother beneficiary on his applica-

tion for conversion of the policy. *Hill v. Hill*, 23 Cal. App.3d 760, 100 Cal. Rptr. 458, *cert. denied*, 409 U.S. 1006 (1972).

Hill and *Voelkel* involved no real state-federal conflict. *Roecker* incorporated state guardianship law where federal law was silent. *Taylor* found the federal statute to pre-empt an inconsistent divorce decree, and the lower court's attempt in *Milhan* to circumvent pre-emption was curtailed by this Court in *Hisquierdo*.

The Maine court's decision in this case is the first to hold squarely that federal law on this subject does not overrule a state court divorce decree mandating a result different from that produced by one acting in reliance on the federal statute. The Maine court has baldly asserted that its holding produces no pre-emption issue, because it is not inconsistent with the federal legislative purpose. 419 A.2d at 1035. Petitioners urge this Court to hold the issue to be squarely one of pre-emption, and to resolve that issue in favor of Donna Ridgway and Prudential.

CONCLUSION

For the reasons presented above, the decision of the Maine Supreme Judicial Court should be reversed, and this Court's Order issued to direct payment of the proceeds of Sergeant Ridgway's SGLI policy to Donna Ridgway.

Respectfully submitted,

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APPENDIX
A. STATUTES—38 U.S.C.

38 U.S.C. §717(a): Insurance maturing on or after August 1, 1946.—The insured shall have the right to designate the beneficiary or beneficiaries of insurance maturing on or after August 1, 1946, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.

38 U.S.C. §770: Beneficiaries—Payment of insurance—(a) Any amount of insurance under this sub-chapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death.

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if

such person had predeceased the member or former member, and any such payment shall be a bar to recovery by any other person.

(c) If, within two years after the death of the member or former member, no claim for payment has been filed by any person entitled under the order of precedence set forth in this section, and neither the Administrator nor the administrative office established by the insurance company or companies pursuant to section 766(b) of this title has received any notice that any such claim will be made, payment may be made to a claimant as may in the judgment of the Administrator be equitably entitled thereto, and such payment shall be a bar to recovery by any other person. If, within four years after the death of the member or former member, payment has not been made pursuant to this section and no claim for payment by any person entitled under this section is pending, the amount payable shall escheat to the credit of the revolving fund referred to in section 769(d).

(d) The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal monthly installments.

(e) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his uniformed service under prior provisions of law will be effective with respect to the increased insurance authorized under the Veterans' Insurance Act of 1974 and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance heretofore in effect.

(f) Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall

not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

38 U.S.C. §3101(a): Nonassignability and exempt status of benefits.—Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

B. REGULATIONS—38 C.F.R.

§ 9.1 Definitions.

(h) The term "policy" means Group Policy No. G-32000, effective September 29, 1965, purchased pursuant to subchapter III of

chapter 19, title 38, United States Code, from the insurer, which was executed and attested on December 30, 1965, and amended on May 24, 1974.

(j) The term "administrative office" means the Office of Servicemen's Group Life Insurance located at 212 Washington Street, Newark, NJ 07102, which is the administrative office established pursuant to 38 U.S.C. 766(b) by the insurer.

§9.16 Beneficiaries and options.

(a) A member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary.

(b) Any designation of beneficiary or election of optional settlement made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect, until properly changed by the member or automatically canceled, under the following rules:

(1) If the insurance terminates following separation or release from all duty in a uniformed service.

(2) If the member enters on duty in another uniformed service.

(3) If the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

(c) If the member acquires Veterans' Group Life Insurance effective on the day folowing termination of his or her Servicemen's Group Life Insurance, any beneficiary designation in effect from the Servicemen's Group Life Insurance shall be considered a designation of beneficiary for Veterans' Group Life Insurance but not for more than 60 days after the effective date of the Veterans' Group Life Insurance, unless at the end of the 60-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than 5 years after the effective date of such insurance.

(d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty under § 9.5(a) or § 9.7 (a) or (b), or for coverage under § 9.1(a)(3) or Veterans' Group Life Insurance by the administrative office.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.

(f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(g) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his or her uniformed service in effect on May 24, 1974, will be effective with respect to the increased amount of insurance authorized on May 24, 1974, by Pub. L. 93-289 (88 Sta. 165) and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance theretofore in effect.

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under § 9.5(a) or § 9.7 (a) or (b) after termination of duty and waives coverage or elects coverage in the amount of $15,000, $10,000 or $5,000, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(i) The insurance proceeds will be paid to the person or persons surviving the insured member in the following order of precedence:

(1) To the beneficiary or beneficiaries designated (see paragraph (d) of this section).

(2) If there be no such beneficiary, to the widow or widower. Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer;

(3) If none of the above, to the child or children and descendants of deceased children by representation;

(4) If none of the above, to the parents or the survivor of them;

(5) If none of the above, to the executor or administrator of the estate of the insured; or

(6) If none of the above, to other next of kin in accordance with

the laws of the State wherein the insured member was domiciled at date of death.

(j) The insured member may elect in writing that settlement of the insurance proceeds be made either in a lump sum or in 36 equal monthly installments. If no election is made or the member elects that payment be made in a lump sum, the beneficiary may elect at the time of the member's death either mode of settlement. An election to be effective must be received before the member's death by the appropriate office as specified in paragraph (d) of this section.

§ 9.17 Taxation and exemption.

Section 770(g), title 38, United States Code provides that payment of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (a) collection of amounts not deducted from the member's pay, or collected from the member by the Secretary concerned under 38 U.S.C. 769 (a), (b) levy under subchapter D, chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (c) the taxation of any property purchased in part or wholly out of such payments.

§ 9.20 Assignments

Servicemen's Group Life Insurance, Veterans' Group Life Insurance and benefits thereunder are not assignable.

§ 9.22 Administrative decisions

(a) Determinations of the Veterans Administration are conclusive under the policy with respect to the following:

(1) The status of any person being within the term "member"

and whether or not he or she is covered at any point of time under the policy including "traveltime" under § 9.5(b)(3) and death within 120 days thereafter from a disability incurred or aggravated while on duty under § 9.7(b).

(2) The fact and date of a member's termination of active duty, or active duty for training, and the fact, date and hours of a member's performance of inactive duty training.

(3) The fact and dates with respect to a member's absence without leave, confinement by civilian authorities under a sentence adjudged by a civil court, or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(4) The operation of the forfeiture provision provided in 38 U.S.C. 773 and § 9.34 with respect to any member.

(5) The existence of total disability or insurability at standard premium rates under § 9.7(a) and (b).

(d) Questions for determination under this section as well as those involving coverage of groups and classes of members and other questions are properly referable to the Assistant Director for Insurance. Authority to make any determinations required under this section is delegated to the Chief Benefits Director and/or Assistant Director for Insurance.

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No. 80-1070

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

DONNA RIDGWAY and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Petitioners,

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY, by their mother and next friend, APRIL D. RIDGWAY,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

When a serviceman has negotiated a settlement agreement with his wife by virtue of which he agrees to maintain his service life insurance in force after the divorce for the benefit of his children, which agreement is subsequently incorporated into the divorce decree, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the insurance proceeds for the benefit of the children if the serviceman dies after naming his second wife as beneficiary in defiance of the agreement?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1070

DONNA RIDGWAY and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Petitioners,

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY, by their mother and next friend, APRIL D. RIDGWAY,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR RESPONDENTS

SUMMARY OF ARGUMENT

I.

On facts similar to those presented in the case at bar, the courts have held with near unanimity in cases involving private insurance contracts that a constructive trust in favor

of the decedent's children will be imposed. They have reasoned that such equitable relief is necessary to prevent unjust enrichment of the substituted beneficiary (usually the second wife of the insured) resulting from the decedent's fraudulent conduct.

Relying on this authority, the Maine Supreme Judicial Court held below that a constructive trust of the insurance proceeds would be an appropriate remedy where Sergeant Ridgway had violated the term of the property settlement agreement with his ex-wife subsequently incorporated in the divorce decree in which he agreed to name his children as beneficiaries of his service life insurance policy and maintain it in force for their benefit. The Court found nothing in the wording of the Servicemen's Group Life Insurance Act (SGLIA) or its legislative history evidencing a Congressional policy which would be frustrated by this result.

Although petitioners have made much of the fact that the SGLIA gives an insured serviceman the right to designate whomever he chooses as beneficiary of the policy, the statutory language does no more than set forth the right of any insured to determine who is to receive the insurance proceeds together with a statement of the persons who would take if no beneficiary is named. Similar language would be found in any life insurance contract. Indeed, virtually identical language appears in other statutes establishing group life insurance programs for federal employees not in the military service. See e.g. 5 U.S.C. §8705 (Federal Employees Group Life Insurance Act). There is nothing in this unremarkable language which gives any hint of a Congressional purpose to displace equitable rules regarding the fraudulent disposition of insurance proceeds which state courts would otherwise apply.

Petitioners have also cited a number of cases holding that

federal law prohibits a state court in a divorce decree from limiting the right of a serviceman to name anyone he chooses to receive the proceeds of his SGLI policy. Respondents do not dispute that such is the law. The constructive device does not interfere with the insured serviceman's right to select the beneficiary of his choice, but merely freezes the funds in the hands of the beneficiary when unjust enrichment would otherwise result. The insurance company may therefore safely pay the named beneficiary in every case or, alternatively, may interplead the contending parties if it is in doubt as to the rightful recipient.

II.

Previous decisions of this Court have recognized that statutes regarding the disposition of federally treated property rights will not be permitted to be used as an instrument of fraud. In *Free v. Bland,* 369 U.S. 663, 670 (1962), the Court specifically noted an exception to the rules providing for the automatic tansfer of the decedent's interest in U.S. savings bonds to the survivor where a breach of trust has occurred. In *Yiatchos v. Yiatchos,* 376 U.S. 306 (1964), the Court deferred to the state court's finding that such a breach of trust had occurred and therefore held that the survivorship feature of a savings bond could not be used to deprive the widow of her interest in the community property. Although the Supremacy Clause was invoked to invalidate a community property claim to railroad retirement benefits in *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802 (1979), the Court commented that there had been no "manipulation problem" as in *Free* and *Yiatchos. Id* at 99 S.Ct. 809.

The foregoing cases are consistent with general rules governing unjust enrichment and restitution. In such cases the defrauded claimant has always been permitted to pursue the property in which he has an interest even though it has been converted by the wrong-doer into a form which would otherwise be beyond the reach of creditors. See e.g. Scott, *Law of Trusts* 3581-3 (3d ed. 1967).

III.

Finally, petitioners have asserted that the insurance proceeds are protected in the hands of Donna Ridgway by 38 U.S.C. §770(g) which insulates them from the claims of creditors. Respondents are not among those against whom the protection was afforded.

Section 770(g) was added to the Servicemen's Group Life Insurance Act in 1970. At that time a substantial body of case authority ahd developed interpreting a nearly identical spendthrift provision in the National Service Life Insurance Act. See 38 U.S.C. 3101a (formerly 454a). Under settled rules of statutory interpretation, Congress is presumed to have intended that section 707(g) would be similarly construed.

In addition, it is absurd to suppose that Congress ever intended to create a haven in section 770(g) for servicemen bent on defrauding their children. On the contrary, the legislative history accompanying the Social Security Amendments of 1974 clearly indicates that Congress had lost patience with servicemen who were using the protection afforded by federal statutes to avoid supporting their children.

Petitioners have never attempted to defend Richard Ridgway's conduct in cutting off the only source of funds

available to support his children although he had contracted not to do so. They also have never denied that Donna Ridgway would be unjustly enriched if she were to receive the insurance money in issue. They have merely insisted that the imposition of a constructive trust is forbidden by federal law. It is submitted that petitioners have failed to show that the decision of the Maine Supreme Judicial Court does "clear and substantial damage to federal interests". *Hisquierdo v. Hisquierdo, supra,* at p. 808 of 99 S.Ct. Moreover,they have also failed to point to any justification based on articulated Congressional policy for construing the SGLIA in a manner so as to produce the obviously unjust result which they insist this Court must reach in the present case.

ARGUMENT

I.

THE DECISION OF THE MAINE SUPREME COURT DOES NOT PRESENT A CONFLICT WITH FEDERAL LAW.

A. The Right Of An Insured Serviceman To Designate The Beneficiary Under His Servicemen's Group Life Insurance Policy Does Not Preclude The Imposition Of A Constructive Trust On The Proceeds.

1. The great weight of authority in cases involving private life insurance contracts supports the imposition of a constructive trust on facts such as those presented in this case.

The fact situation presented in the case at bar is by no means unique. Many cases have been decided in other jurisdictions involving disputes between the first wife and children of a deceased insured and the second wife regarding the proper disposition of life insurance proceeds. The overwhelming weight of authority holds that where the decedent was required by a settlement agreement to make life insurance proceeds payable to his first wife or to the children of the first marriage, his subsequent designation of his second wife as the beneficiary under the policy will be ineffective to deprive his first wife or her children of the insurance proceeds. See e.g. *Equitable Life Assurance Soc. v. Wilkins,* 44 F.Supp. 594 (E.D. N.Y. 1942); *Great Amer. Reserve Ins. Co. v. Maxwell,* 555 P.2d 988 (Colo. Ct. of App. 1976); *Massachusetts Linotyping Corp. v. Fielding,* 312 Mass. 147, 43 N.E.2d 521 (1942); *McKissick v. McKissick,* 560 P.2d 1366 (Nev. 1977).

The existence of a property settlement agreement between the divorcing parties by virtue of which the serviceman commits himself to keep his military life insurance in force for the benefit of his former wife or children has generally been considered a critical element in cases in which a constructive trust has been imposed.[1] See e.g. *McKissick v.*

[1]Inexplicably, petitioners have omitted any mention of the property settlement agreement in their statement of the case although it was stipulated that negotiations took place between the parties and their attorneys over a period of several months concerning division of property, child support, disposition of Richard Ridgway's service life insurance policy and other matters which finally culminated in an agreement which was incorporated into the divorce decree. App. 33. Petitioners' only acknowledgment of the existence of the agreement is buried in a footnote. Pet'rs' brief, p. 26. The agreement is characterized as being merely "oral" although no reason appears why this is of any consequence, especially since it was incorporated into the divorce decree. Moreover, it was April Ridgway's *reliance* on this agreement as providing support for the children in the event of Richard's death which is the relevant consideration since it is this reliance coupled with Richard's fraudulent breach of his commitment which gives rise to the constructive trust.

McKissick, 560 P.2d 1336 (Nev. 1977). The courts have held that such an agreement constitutes a contract between the parties supported by valuable consideration on each side. *Hundertmark v. Hundertmark,* 372 Pa. 138, 93 A.2d 856, 858 (1952).

The existence of the property settlement agreement also affects the balance of equities between the parties which gives rise to the constructive trust. It is obvious that in negotiating a division of the marital property, April Ridgway may have made concessions in order to secure Richard's agreement to keep his military insurance in force as a potential source of support for the children. When Richard later made Donna the beneficiary of his service life insurance policy, he acted in defiance of his own agreement as well as being in contempt of the divorce decree.

Under these circumstances, the courts have held with near unanimity that the beneficiary of the life insurance policy holds the proceeds under a constructive trust for the benefit of those persons who would otherwise be deprived of the benefit of the bargain made by the insured. In a relatively recent opinion, Chief Judge Breitel has written that:

> In the words of Judge Cardozo, "(a) constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." *Simonds v. Simonds,* 45 N.Y.2d 233, 380 N.E.2d 189, 193 (1978). See also *Richards v. Richards,* 58 Wis.2d 990, 206 N.W.2d 134, 136 (1973); 5 Scott, *Law of Trusts* §462 (3d ed. 1967).

Since Donna Ridgway would obviously be unjustly enriched if permitted to receive the insurance proceeds made payable to her through her husband's wrongful act, the Court below

as clearly correct under state law in imposing a constructive trust to prevent this result.

2. 38 U.S.C. §770(a) does not require a different result where servicemen's group life insurance is concerned.

Petitioners have argued that the decision of the Maine Supreme Court is inconsistent with federal law and with judicial decisions from other jurisdictions. In the first place, they suggest that the decision below violates federal law since it limits the right conferred upon a serviceman by the Servicemen's Group Life Insurance Act to change the beneficiary of his service life insruance whenever he pleases. Petitioners have devoted much energy to discussing cases in which inconsistent provisions of state law or state court divorce decrees were held to be pre-empted by federal statutes preserving a serviceman's right to change the beneficiary designation on his military life insurance at any time. See e.g. *Prudential Ins. Co. v. King,* 453 F.2d 925 (8th Cir. 1971); *Stribling v. U.S.,* 419 F.2d 1350 (8th Cir. 1969); *Stratton v. Servicemen's Group Life Ins. Co.,* 422 F.Supp. 1119 (D. Iowa 1976); *Johnson v. Prudential Ins. Co.,* 182 Neb. 673, 156 N.W.2d 812 (1968). The "conflict" which petitioners perceive is illusory since both respondents and the court below have conceded that the federal statutes in question supersede provisions of a state divorce decree requiring a serviceman to maintain his life insurance in force for the benefit of a wife or children by a prior marriage. The real issue is whether, after the designated The real issue is whether, after the designated beneficiary has received the insurance proceeds, he may nevertheless be subject to a constructive trust in favor of persons whose

equitable claims to the proceeds are superior to his own. Since none of the cases cited above even discuss the possibility that a constructive trust should be imposed, they add nothing to a resolution of the issue presented in the case at bar.

Petitioners have also cited the case of *Stribling v. U.S.*, 419 F.2d 1350 (8th Cir. 1969) for the proposition that strict compliance with the provisions for designating a beneficiary would be required under the SGLIA. Although it is conceded that, in writing the SGLIA, Congress may have given weight to the administrative convenience of the private life insurance companies participating in the program, the relevance of this observation is not immediately evident since no one contests the right of the insurance company to rely on the last beneficiar designation in its files. In response to a similar argument made in the context of non-military life insurance, it has been stated that:

> The cases which the appellee cites . . . enunciate the principle that to make an effective change of beneficiary where the right so to do is reserved to the insured, the requirements of the policy with respect to consonnant notification of the insurer must be fully complied with. No one disputes that principle. So far as the insurance company is concerned, the one entitled to the proceeds of a policy, upon its accrual as a liability of the company, is the person named at the time as the beneficiary of the policy in accordance with the company's rules and regulations. That is an entirely different matter than the question which this litigation presents. *Hundertmark v. Hundertmark,* 372 Pa. 138, 93 A.2d 856, 859 (1952). See also *Simonds v. Simonds,* 45 N.Y.2d 233, 380 N.E.2d 189, 192 (1978).

Petitioners have also purported to find in the language of 38 U.S.C. §770 providing for the serviceman's right to

designate the beneficiary of his SGLI policy a Congressional purpose to pre-empt any state court proceedings which might prevent the proceeds from passing to the person named. The language from which this implication is said to arise is quite unremarkable. It consists of a recitation of the line of succession to the insurance proceeds beginning with the beneficiary designated by the insured. Indeed, one would expect to find similar language in any private life insurance policy stating who would succeed to the insurance proceeds in default of a named beneficiary. Moreover, although it has been suggested that Congress may have been particularly solicitous regarding the testamentary desires of its military personnel, virtually identical language is used in 5 U.S.C. §8705 (Federal Employees Group Life Insurance Act) establishing a similar group life insurance program for civil service employees.

Although petitioners have argued that Congress did not intend to countenance any infringement on a serviceman's absolute discretion to name anyone he pleases as the beneficiary of his SGLI policy, they have also acknowledged that, in enacting the SGLIA, Congress subordinated the goal of carrying out the serviceman's intent to the administrative convenience of the private insurers carrying the group coverage. Pet'rs' brief, pp. 9-10. Whereas a serviceman could formerly have successfully changed the beneficiary designation under his NSLI policy by simply taking sufficent steps to manifest his intent to do so, see e.g. *Willis v. U.S.*, 291 F.2d 5 (6th Cir. 1961), section 770 of the new act required that a beneficiary designation be in writing and received "in the uniformed services" in order to be effective. The inevitable result was that in cases in which the insured's intent to change beneficiaries was clearly established, the designation was held to be ineffective because not

technically in compliance with the statute and accompanying regulations. See e.g. *Goomer v. U.S.*, 471 F.2d 1 (5th Cir. 1973); *Jones v. U.S.*, 331 F.Supp. 114 (D. Tenn. 1971). It is therefore clear that carrying out the intent of the insured serviceman was at most one of several competing Congressional objectives in enacting the SGLIA.

Although petitioners have also contended that a serviceman's beneficiary designation must be "strictly honored", pet'rs' brief, p. 6, it is assumed that they would nevertheless acknowledge the existence of at least *some* limitations on the exercise of this right based solely on equitable principles. It is well established, for example, that a life insurance beneficiary will be denied the insurance proceeds if he murders the insured. See e.g. *Mutual Life Ins. Co. v. Armstrong,* 117 U.S. 591 (1886). In the case of *Shoemaker v. Shoemaker,* 263 F.2d 931 (6th Cir. 1959), the Court of Appeals construed the language of 38 U.S.C. §717, similar to that of the SGLAI, conferring an unrestricted right upon a serviceman to select the beneficiary under his NSLI policy, as not requiring that payment be made to a beneficiary who had taken the life of the insured. The Court's decision was based on public policy "founded on equitable principles". *Id* at 932. Such a holding is clearly inconsistent with petitioners' insistence that the serviceman's beneficiary designation must be deferred to in every case.

Similarly, courts have interpreted the counterpart language of the Federal Employees Group Life Insurance Act, 5 U.S.C. §8705, as permitting judicial application of the equitable doctrine of "clean hands". Thus potential beneficiaries have been excluded if not considered to be worthy by reason of previous misconduct. See e.g. *Brinson v. Brinson,* 334 F.2d 155 (4th Cir. 1964); *Brantley v. Skeens,* 266 F.2d 447 (D.C. Cir. 1959). No reason appears

why this Court and the Maine Supreme Judicial Court were not equally at liberty to reject the insured's beneficiary designation on equitable principles in order to prevent unjust enrichment.

Although in the *Brantley* and *Brinson* cases no beneficiary had been specifically designated in writing by the insured,[2] petitioners would apparently make no distinction between cases where the insured had designated a specific person as beneficiary and those in which he had simply left the beneficiary to be determined under the statute. In both instances, petitioners apparently would insist that the imposition of a constructive trust to control the disposition of the insurance proceeds would interfere with the effectuation of the insured's "intent" even where his actual preference is unclear. Moreover, it becomes increasingly difficult to imageine that Congress intended that the beneficiary designation of the insured serviceman should pre-empt the application of equitable principles by state courts in deciding who should receive the insurance proceeds when, as in the case at bar, he has not even bothered to name a particular person and has simply allowed the designation to be made by default in accordance with a line of succession set forth in the statute.

Petitioners have been critical of the Maine Supreme Court's reliance on a statement by the Administrator of Veterans' Affairs in establishing the objectives of Congress in passing the Servicemen's Group Life Insurance Act. The statement in question was appended to the House Report on

[2]It should be noted that, in the case at bar, Richard Ridgway did not specifically designate Donna Ridgway as the beneficiary of his SGLI policy. Instead he requested that the proceeds be paid as "by law". Since he did not name Donna individually, it is at least conceivable that he believed that the children would get the money.

the bill. It was made in response to a Congressional request for an analysis of the legislation in question. The Administrator's review of the bill does not identify any Congressional purpose to enlarge the discretion of insured servicemen in selecting life insurance beneficiaries. See U.S. Code Cong. & Ad. News 3235-3241 (1965). In fact, nowhere in the legislative history of the act is there the slightest reference to such an objective or any hint of a Congressional intention to insulate the proceeds of the military insurance from the claims of all persons other than the named beneficiaries.[3]

The only reported case involving Servicemen's Group Life Insurance in which the possibility of impossing a constructive trust was discussed is *Weymann v. Wilson,* 320 F.Supp. 980 (M. D. Fla. 1970). In that case, the divorced wife of a deceased serviceman sued to recover the proceeds of a life insurance policy which he had designated his second wife to receive despite the existence of language in the divorce decree requiring him to retain his first wife as beneficiary. The Court's discussion of the subject of constructive trusts is contained in the following enigmatic paragraph:

> A constructive trust is a creature of equity. (Citing Florida case law.) The circumstances which warrant

[3]It should be noted that Congress did not even bother to include in the SGLIA the language guaranteeing the insured the right to change the beneficiary "at all times" and "without the consent of the beneficiary" which appears in the NSLIA. Compare 38 U.S.C. §770(a) with 38 U.S.C. 717(a). Whether or not this difference in language reflects a change in Congressional policy is not clear. In any event, the omission of this language which was quoted and relied on by this Court in *Wissner v. Wissner,* 338 U.S. 655 (1950), does not support petitioners' contention that Congress had become increasingly solicitous of the right of insured servicemen to make beneficiary designations free from any type of restraint.

> the imposition of a constructive trust are not present here. *Id* at p. 989.

Although one may quarrel with the court's conclusion on the facts, the significance of the opinion is that the court impliedly recognized that the imposition of a constructive trust under state law would not conflict with the SGLIA.

Few cases have arisen under the military insurance acts which preceded the SGLIA in which the possibility of imposing a constructive trust was discussed. Two such cases have been found, however, which appear to be exactly in point.[4] In both cases the cases the courts held that a constructive trust should be placed on the proceeds of NSLI policies in favor of persons other than those legally designated by the deceased servicemen as beneficiaries.

In the case of *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d 344, *cert. denied* 355 U.S. 891, 78 S.Ct. 263, 2 L.Ed.2d 189 (1957), the defendant promised her brother that if he named her as the beneficiary of his military life insurance policy she would distribute the proceeds of the policy equally to his brothers and sisters. The serviceman was subsequently killed in action, but his sister refused to distribute the insurance proceeds as she had promised. The court ruled that she held the proceeds subjec to a constructive trust in favor of the relatives even though she was the sole beneficiary designated under a federal statutory provision identical with that which governs the case at bar.

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[4]In addition to the two cases discussed hereafter, it should be noted that the District of Columbia Court of Appeals indicated in *Suydam v. U.S.*, 404 F.2d 1369 (D.C. Cir. 1968) that it would impose a constructive trust under facts such as those presented here even though the cestui que trust was not the person designated by the deceased serviceman as the beneficiary of his insurance policy. It is therefore completely inaccurate to characterize the *Suydam* decision, as petitioners do (see pet'rs' brief, p. 19), as specifically rejecting a constructive trust theory.

In *Burgess v. Murray,* 194 F.2d 131 (5th Cir. 1952), a serviceman made the proceeds of his military insurance payable to his father and/or sister. Later he wrote to his father saying that he or the serviceman's sister should use the proceedsfor the benefit of the insured's children. Although letter was not legally effective as a change of beneficiary under federal law, the court nevertheless imposed a constructive trust in favor of the children upon the death of the insured.

Petitioners have attempted to distinguish the *Voelkel* and *Burgess* cases on the grounds that the result reached by the courts in imposing a constructive trust was consistent with the intent of the deceased serviceman. In so contending, petitioners have missed the point. The issue is not whether the result is consistent with the serviceman's wishes, but whether stae law is pre-empted in every case by 38 U.S.C. §770(a) from interposing a constructive trust which will prevent the beneficiary designated by the deceased serviceman in accordance with the statute from retaining the proceeds. By conceding that a constructive trust may *ever* be imposed in such cases, regardless of the serviceman's wishes, on the basis of equitable considerations rather than a literal application of 38 U.S.C. § §717(a) and 770, petitioners have conceded away the issue on which they base their claim of federal jurisdiction.

B. The Previous Decisions Of This Court Support The Rule That Statutes Regulating Federal Property Rights Will Not Be Permitted To Be Used As The Instruments Of Fraud.

In the case of *Free v. Bland,* 369 U.S. 663 (1964) this Court determined that the surviving co-owner of U.S. savings bonds purchased with community funds was entitled

to ownership of the bonds despite a spouse's conflicting claim based on community property law. The Court noted in passing, however, that:

> The Solicitor General, appearing as *amicus curiae,* acknowledges that there is an exception implicit in the savings bond regulations, including the survivorship provision, so that federal bonds will not be a "sanctuary for a wrongdoer's gains." With this, we agree. The regulations are not intended to be a shield for fraud and relief would be available in a case where the circumstances manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property. *Id.* at 670.[5]

The issues left open in *Free v. Bland* was squarely presented in *Yiatchos v. Yiatchos,* 376 U.S. 306 (1964). In that case, U.S. savings bonds were purchased with community funds by Mr. Yiatchos in the names of himself and his brother. The Court deferred to the determination of the state court that Yiatchos had abused his position of trust as the manager of the community property in placing the proceeds beyond his wife's reach. In this connection, the Court stated that:

> It would seem obvious that the bonds may not be used as a device to deprive the widow of property rights which she enjoys under Washington law and which would not be transferrable by her husband but for the survivorship provisions of the federal bonds. *Id.* at 309.

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[5]The Court's observation is consistent with general principles governing the law of trusts. The rule is that the victim of fraud may pursue the misappropriated property even though it has been converted into a form which could not otherwise be reached by creditors. 5 Scott, *Law of Trusts* 3581-2 (3d ed. 1967). The rule also applies to the proceeds of an insurance policy paid for with misappropriated funds despite the existence of a statute exempting the proceeds from the claims of creditors. *Id* at 3583.

More recently, the Court has held in *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 802 (1979), 99 S.Ct. held that retirement benefits under the Railroad Retirement Act are not subject to a spouse's community property claims in a divorce action. The Court specifically found, however, that there had been no "manipulation problem" as in *Free* and *Yiatchos. Id.* at p. 809 of 99 S.Ct.

The present case is controlled by the exception in *Free v. Bland* and the holding in *Yiatchos v. Yiatchos.* Richard Ridgway entered a binding agreement with his wife to keep his service life insurance in force for the benefit of the children as an alternative source of support if he should die before they became of age. The property settlement agreement was the product of extended negotiations between the parties in which concessions were made by April Ridgway in order to gain an agreement with Richard. App. 33. The agreement was in turn made part of the divorce decree and was approved by the court. App. 33. Because there was no effective way of policing the agreement, April Ridgway and the children had to rely on Richard to keep his part of the bargain as far as the insurance was concerned just as Mrs. Yiatchos relied upon her husband to protect her interest in the community property. Richard's subsequent conduct in surreptitiously breaching the agreement by changing the beneficiary within a few days after his marriage to Donna constituted a constructive fraud.

In the case of *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d 344, cert. denied, 355 U.S. 891 (1957), discussed above, the court stated, in imposing a constructive thrust upon the proceeds of the deceased serviceman's military insurance policy that:

> . . . if there is a breach of confidence coupled with an unjust enrichment which shocks the conscience it is

> permitted to stand, it is then said to be a "constructive" fraud. To hold otherwise, it is said, is rewarding bad faith. *Id.* at p. 349 of 141 N.E.2d.

Similarly, in *Guiterrez v. Madero,* 546 S.W.2d 187, 189 (Tex. Civ. App. 1978), the court said:

> In failing to maintain his children as the beneficiaries and redesignating the beneficiary as Mary Madero, Rudy Gutierrez misappropriated the children's interest in the policy. This misappropriation constituted constructive fraud. In order to provide relief to the aggrieved minor children, a constructive trust may be imposed. See also *Simonds v. Simonds,* 45 N.Y.2d 233, 380 N.E.2d 189, 194 (1978).

In *Wissner v. Wissner,* 388 U.S. 655 (1950), upon which petitioners so heavily rely, there was no suggestion of fraud or breach of a fiduciary relationship on the part of the deceased serviceman. Although the marital relationship had become strained, there was no divorce and no agreement regarding a division of property preceding Major Wissner's designation of his parents as the beneficiaries of his military life insurance. The widow's legal position was based on an asserted community property interest in the insurance proceeds traceable through the premiums rather than upon a commitment made by her husband to retain her as the beneficiary of his NSLI Policy. Thus, as far as the Court's opinion indicates, there was no basis upon which a constructiv trust could have been imposed. *Wissner* is therefore consistent with the Court's statement in *Free v. Bland, supra,* that statutes regulating federal property rights will not be permitted to serve as a "shield for fraud". *Id.* at 670.

C. The Ridgway Children Are Not "Creditors" Within The Meaning Of 38 U.S.C. §770(g).

Petitioners argue that regardless of whether Donna Ridgway would be unjustly enriched, the insurance proceeds are insulated from the claims of creditors by the language of 38 U.S.C. §770(g). Their contention is inconsistent wth the well settled rule that the claims of dependents arising out of the family relationship are not the type of debts which §770(g) was intended to protect against.

Although no cases have been found involving the application of §770(g) to an obligation under a property settlement agreement and divorce decree to make an insurance policy payable to children of a serviceman's first marriage, this language has been interpreted a number of times in the context of attempts to enforce the claims of dependents for support out of veterans' benefits. These cases arose under 38 U.S.C. §3101a or its predecessor, 38 U.S.C. §454a. The language of these sections is identical to that used in §770(g). In the case of *Gaskins v. Security-First Nat. Bank,* 30 Cal.App.2d 409, 86 P.2d 681, 688 (Dist. Ct. of App. 1939), the court stated in response to an exemption argument based on the language of section 454a that:

> The obligation of a father to support his minor children is not a *debt* contemplated by this act of Congress, but is an obligation growing out of the parental status and public policy. . ., and we cannot assume that the Federal government ever intended to throw around these federal funds legal strictures that would permit or enable the beneficiaries thereof to refuse to discharge their duty to support their children. See also *In re Flanagan,* 31 F.Supp. 403 (D. D.C. 1940); *Re Bagnall's Guardianship,* 238 Iowa 905, 24 N.W.2d 597, 612 (1947).

A similar conclusion was expressed in the case of *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d (1957), cert. denied,

355 U.S. 891 (1957), discussed above. In holding that a constructive trust should be placed on insurance proceeds for the benefit of the deceased serviceman's relatives despite the contention of the named beneficiary that they were insulated from such claims under 38 U.S.C. §454a (analogue of §770(g)), the court said that:

> It is plain (that) the object of this section is to protect the beneficiaries who are, by the act, close relatives and dependents of the deceased soldier from their own improvidence. This is in effect what is commonly known as a "spendthrift" clause. Clearly the purpose of section 454a, supra, is to prevent creditors from taking the proceeds of the soldier's insurance from his beneficiaries. We feel it should be interpreted in that light. The words "equitable process whatever" is limited to those processes brought by creditors. *Id.* at p. 346 of 141 N.E.2d.[6]

The same distinction between obligations to make payments for alimony and support and other types of debt was recognized by this court in the case of *Wissner v. Wissner,* 388 U.S. 655 (1950). In that case the Court rejected the claim of a serviceman's widow that she was entitled to a portion of the proceeds of his military life insurance since the premiums had been paid out of community property. The Court distinguished several of the cases cited above on the grounds that:

> . . . (T)he community property principle rests upon something more than the moral obligation of supporting spouse and children: The business relationship of man

[6]A similar distinction has been made regarding governmental entities seeking reimbursement for support provided to disabled veterans. See e.g. *Department of Health & Rehab. Services v. Davis,* 616 F.2d 828 (5th Cir. 1980); *Savoid v. Dist. of Columbia,* 288 F.2d 851 (D.C. Cir. 1961); *In re Bemowski's Guardianship,* 3 Wis.2d 133, 88 N.W.2d 22 (1958).

> and wife for their mutual monetary profit. . . Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific recognition of particular needs, in the alimony and support cases. *Id.* at 660.

Petitioners have discussed the *Wissner* decision as if it supported their positions, completely ignoring the fact that the Court there distinguished the very cases relied upon here to demonstrate that the Ridgway children are not among those to whom the exemption applies. In *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802, 813 (1979), the Court explained that the distinction made in *Wissner* was based on the fact that claims for support and alimony are based on "need" whereas community property claims are not. Nothing about the Court's discussion suggests that the same distinction would not also be made in the case at bar.

It is also significant that sub-section 770(g) was added to the SGLIA in 19970. See 91 Stat. 291. By that time, judicial construction of the existing analogues of 38 U.S.C. § 770(g) had crystallized an exception for financial obligations arising out of the family relationship. In a 1957 A.L.R. annotation entitled "Enforcement of claims for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions", it was stated that:

> With very few exceptions the cases hold that payments arising from service in the Armed Forces, or property acquired with such payments, though exempt as to the claims of ordinary creditors, are not exempt from a claim for alimony, support or maintenance. . . Annot., 54 A.L.R.2d 1422, 1437 (1957).

The D.C. Circuit Court of Appeals reached the same conclusion in *Schlaefer v. Schlaefer,* 112 F.2d 177, 130 A.L.R. 1014 (D.C. Cir. 1940). In an opinion written by Mr.

Justice Rutledge, the court concluded, after setting forth the relevant case authority at great length, that:

> The obligation on which appellant's claim is based is not a "debt" or a "liability" in the ordinary usages of those terms. (Citations omitted). It is a duty of higher obligation. As has been said, it is not one within the usual purposes of exemption statutes. (Citations omitted) . . . While the analogies are not entirely free from conflict, the clear weight of authority[7] and the better considered reasoning supports the view we have taken. *Id* at pp. 1025-27 of 130 A.L.R.[8]

On the basis of the foregoing, it may be presumed that Congress intended 38 U.S.C. §770(g) to be construed in the same manner as its analogues in previously enacted exemption statutes. *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 1957-58 (1979).

The Solicitor General argues that even if the Ridgway children are not "creditors" under §770(g), they are nevertheless barred by the language prohibiting the use of legal or equitable process to reach the insurance proceeds

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[7]This authority was specifically recognized by this Court in *Wissner v. Wissner, supra.*

[8]Oddly enough, the Solicitor General argues that the weight of judicial authority in 1970 was to the contrary. Sol. Gen'l's brief, p. 19, n. 18. In support of this position, he has cited three cases, two of which have nothing to do with exemption statutes. In *Bonner v. U.S.,* 222 F.Supp. 539 (D. Mass. 1963), a serviceman transferred his NSLI policy to his wife at the time of divorce, but later named his second wife as beneficiary. The court held that he retained the right to change beneficiaries but neither cited nor discussed §3101a. In *Heifner v. Soderstrom,* 134 F.Supp. 174 (N.D. Iowa 1955), the District Court ruled that a divorce decree conveying all community property to the wife did not bar the serviceman's right to change the beneficiary of his NSLI policy. The court did not discuss §3101a and specificially reserved the question of whether a constructive trust would be imposed under appropriate circumstances.

before or after they are received. He contends that any other reading would turn that portion of the statute into surplusage. Sol. Gen'l's brief, p. 20. On the other hand, his reading of the statute would not improve it. The language exempting benefits from claims of creditors would become redundant under his interpretation since the prohibition on the use of any legal or equitable process is obviously broad enough to bar enforcement of any creditor's claim. In addition, the Solicitor General's reading of the statute has uniformly been rejected by the cases. See e.g. *Voelkel v. Tohulka,* 238 Ind. 588, 141 N.E.2d 344, 346 (1957), cert. denied, 355 U.S. 891 (1957). Section 770(g) should therefore be read to reflect this judicial construction of its analogues which existed in 1970 when it was added to the SGLIA.

The Solicitor General also argues that even if §770(g) does not exempt claims for "child support', the Ridgway children would nevertheless be barred since insurance proceeds are not within the exemption. Sol. Gen'l's brief, p. 21. It seems obvious, however, that, in the event of Richard Ridgway's death, the insurance money was intended to replace his obligation under the divorce decree to make monthly support payments, pay the children's medical and dental expenses, and contribute to the purchase of their clothing. It is difficult to see how the purpose of this fund of money could be described other than as "child support". Indeed, when Richard Ridgway died, his insurance was the only available source of cash to meet these expenses other than April Ridgway's earnings and public welfare.

The Solicitor General's argument also misses the point of the cases which have held that exemption statutes like 38 U.S.C. §770(g) do not apply to claims like alimony and child support. These cases proceed on the theory that "the obligation of a father to support his minor children is not a

debt within the meaning of the statute, but it is an obligation growing out of the parental status and public policy." *American Law of Veterans* 32 (2d ed. 1954). In the case at bar, the source of the obligation to furnish insurance to provide funds for the children's support in the event of Richard Ridgway's death arose, not as a result of any commercial or contractual commitment, but because he was the children's father. Thus the Ridgway children are not "creditors" within the meaning of §770(g) any more than they would have been had they been seeking to collect child support payments directly from their father's veteran's pension.

In the final analysis, there is a certain unreality about petitioners' arguments in light of their apparent concession that Donna Ridgway will be unjustly enriched by the result they seek. Surely the judgment this Court is being asked to reach ought to be justified on some policy basis which serves a larger good even though absurd and unjust results would admittedly occur in individual cases. None is suggested.

Although Prudential Insurance Company is apparently concerned that it will become "enmeshed" in a wave of litigation[9] if the Ridgway children are permitted to receive the insurance proceeds, the basis for these apprehensions remains unclear. As pointed out above, the imposition of a constructive trust to prevent unjust enrichment will not bar Prudential from paying the person shown by its files to be the serviceman's designated beneficiary. If Prudential is made subject to court-ordered restraint in making payment while the insurance money remains in its hands, it can avoid the necessity of resolving competing claims for payment by interpleading the contesting parties and paying the insurance proceeds into court. The cost of this relatively simple

[9]Pet'rs' brief, p. 28.

procedure can legitimately be passed onto to policy-holders in the form of increased premiums. The nominal expense involved in the interpleader procedure is amply justified as a means of preventing the unjust enrichment of persons who would otherwise receive a windfall benefit from the misconduct of the insured.

The increase in litigation which Prudential fears is illusory. Of the number of servicemen who presently have SGLI policies in effect and become divorced, only a comparative few will actually commit themselves in property settlement agreements to keep their SGLI policies in effect for the benefit of their children or ex-wives. Most of these servicemen will honor their agreements. It is only those few who renege on their commitments and defy court orders directing them to maintain their insurance in force for their family members who will provoke a request that a constructive trust will be imposed.

The result contended for by petitioners would produce other unfortunate results. Because the subject of military life insurance comes up infrequently in divorce cases, practitioners not specializing in the field are likely to be unaware of precedents holding that such policies may not safely be made a part of the division of the marital property. Thus the resolution petitioners propose would create a trap for the unwary from which relief through a judicially imposed constructive trust would no longer be available regardless of the equities involved.

If divorcing spouses became aware of the difficulties of binding a serviceman to maintain his life insurance in effect for his children or ex-wife, they might find it impossible to deal effectively with the policy as an asset in any division of the marital property. The insurance would have little value for the dependents, if petitioners' contentions are accepted,

because they would have no guarantee that their designation as beneficiaries would be maintained. It would also be useless to the serviceman if he had no other family members who were dependent on him for support. Thus a serviceman who intended in good faith to provide life insurance for the benefit of his children might nevertheless be required to purchase a new policy from a private insurer in order to provide acceptable assurance to his ex-wife and her attorney that his expressed intention would in fact be carried out. The problem would be particularly acute if the sericeman had a medical condition which made it difficult or impossible for him to obtain private life insurance.

Finally, it should be noted that the decision of the court below does not adversely affect the right of an insured serviceman to change the beneficiary of his service life insurance policy at any time. Except in cases in which the serviceman is attempting to defraud a dependent who has a legitimate interest in the policy proceeds, the named beneficiary will retain them.

Despite the suggestion of the Solicitor General to the contrary, there is nothing in the legislative history to indicate that Congress gave any thought whatever to placing proceeds of SGLI policies beyond the reach of family members whom the serviceman had promised to retain as beneficiaries. Indeed, it is incredible to suppose that Congress would have intended that the protection afforded to its servicemen would extend so far. In 1974, Congress adopted several amendments to the Social Security Laws specifically designed to facilitate collection of unpaid alimony and child support payments from military personnel and other federal employees. See 93 Stat. 647, 42 U.S.C. §659. During the floor debates on these measures, Senator Montoya stated:

> Mr. President, it seems clear to me that the civil or military services of the U. S. Government are dis-

> honored when employees or former employees are allowed to become deadbeats and are protected from court action to collect family support money.
>
> The women who are left to fend for themselves in these cases are usually unskilled, middle-aged wives and mothers who are unprepared to enter the labor market in competition with younger and better-trained women. They have children who need the help and support of both a father and a mother. When the support of the father is withdrawn, it is too often the State which must take over with welfare payments.
>
> Mr. President, the child support proposal contained in the committee substitute will give us an opportunity to prove to these women and children that justice exists for them, too, in the United States. 120 Cong. Record 40339 (1974).

Petitioners would nevertheless have it that, despite the Congressional sentiment for providing "justice" for children whose servicemen fathers were refusing to support them, Congress intended to make an exception where military insurance is involved. The suggestion that Congress could have intended such a result is particularly incredible where the serviceman in question has specifically contracted to make his serviceman's life insurance policy payable to his children and they have depended upon him to fulfill that commitment.

In *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802, 808 (1979), this Court stated that:

> On the rare occasion where state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. . . . A mere conflict in words is not sufficient. State family and family property law must do "major damage" to "clear

> and substantial" federal interests before the Supremacy Clause will demand that state law be overriden. . . .

Petitioners have not met this rigorous standard. Moverover, they have completely failed to point to any justification based on preservation of federal interests for construing the SGLIA in a manner which would produce the obviously unjust result which they insist that the Court must reach in the present case.

CONCLUSION

For the reasons set out above, the decision of the Maine Supreme Judicial Court should be affirmed.

Respectfully submitted,

/s/ Curtis Webber

Court-appointed Counsel for Respondents

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CLERK

No. 80-1070

In the Supreme Court of the United States

OCTOBER TERM, 1980

DONNA RIDGWAY AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONERS

v.

HAYLEY D. RIDGWAY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether federal law prohibits a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy, for the benefit of the children of a deceased serviceman's first marriage, where the serviceman designated his second wife as the policy beneficiary, in violation of the terms of a divorce decree and an underlying property settlement requiring him to name the children as beneficiaries.

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1070

DONNA RIDGWAY AND PRUDENTIAL INSURANCE COMPANY OF AMERICA, PETITIONERS

v.

HAYLEY D. RIDGWAY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This case concerns the impact of a federal statute, the Servicemen's Group Life Insurance Act of 1965 ("the SGLIA"), 38 U.S.C. 765 *et seq.*, and regulations promulgated to implement that statute, 38 C.F.R. Part 9, upon the authority of a state court to direct disposition of the proceeds of an SGLI policy pursuant to state law. The SGLIA authorizes the Administrator of Veterans' Affairs, the head of the Veterans' Administration ("VA"), to purchase group life insurance policies insuring the lives of members of the uniformed services from qualified commercial insurers. 38 U.S.C. 766. Although the insurers chosen by the VA administer the policies they issue and

make benefit payments under them, the Administrator has ultimate responsibility for the proper implementation of the SGLIA and has promulgated regulations to that end. See *Shannon* v. *United States*, 417 F.2d 256, 259-261 (5th Cir. 1969). The Act and implementing regulations specify precisely how beneficiaries are to be designated or determined, direct payment of benefits to those beneficiaries alone, and protect payments to beneficiaries from attachment, levy, or seizure. The SGLI program is an important feature of the United States' military personnel policy, designed to render military service attractive and to maintain morale of service members. More than 3 million SGLI policies were in effect at the end of fiscal year 1979, covering service members in all 50 states. The United States accordingly has an interest in assuring that state court decrees governing the disposition of payments to policy beneficiaries do not conflict with the express terms and underlying policies of the Act.

STATEMENT

A. The Servicemen's Group Life Insurance Act

1. The Servicemen's Group Life Insurance Act was enacted in 1965, Pub. L. No. 89-214, 79 Stat. 880 *et seq.*, in order to make group life insurance coverage available to all members of the uniformed services on active duty. H.R. Rep. No. 1003, 89th Cong., 1st Sess. 7 (1965).[1] The impetus for enactment of the SGLIA was provided by the escalating level of hostilities and resulting casualties in the Vietnam conflict, which caused private commercial insurers to restrict the availability of coverage to service members. 111 Cong. Rec. 24339 (1965) (re-

[1] The Act initially provided coverage for members serving in the Army, Navy, Air Force, Marines, Coast Guard, the Commissioned Corps of the United States Public Health Service, and the Environmental Science Services Administration (subsequently redesignated the National Oceanic and Atmospheric Administration). 79 Stat. 880.

marks of Rep. Teague);[2] see also S. Rep. No. 619, 89th Cong., 1st Sess. 3 (1965).[3] An earlier program of federally sponsored life insurance for service members, the National Service Life Insurance Act of 1940 ("the NSLIA"), ch. 757, Title VI, 54 Stat. 1008 *et seq.* and the NSLIA of 1958, as amended, 38 U.S.C. 701 *et seq.*, adopted in light of the approach of World War II, had been allowed to lapse after the end of the Korean hostilities, as commercial insurance again became available to service members. Accordingly, NSLI coverage was not generally available to service members on active duty in 1965 who had not been previously covered. See 38 C.F.R. 8.0; 111 Cong. Rec. 24339 (1965) (remarks of Rep. Teague).

Although its purposes and provisions resemble those of the NSLIA in many respects,[4] the SGLIA differs from the earlier statute in that it directs the Administrator of Veterans' Affairs to purchase coverage from one or more commercial insurers satisfying criteria prescribed by Congress, rather than offering coverage by the United States as insurer. 38 U.S.C. 766(a).[5] Accordingly, the

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[2] Representative Teague, Chairman of the Committee on Veterans' Affairs, directed his comments to H.R. 10873, 89th Cong., 1st Sess. (1965). The text of the House bill was ultimately substituted for the original text of a counterpart Senate bill, S. 2127, 89th Cong., 1st Sess. (1965), and was adopted without material change as S. 2127. See 111 Cong. Rec. 24334-24336, 24346-24347, 24727-24730, 24911 (1965).

[3] S. Rep. No. 619 accompanied the Senate bill, S. 2127, which (as initially passed by the Senate) provided for a program of noncontributory indemnities for families of service members killed in combat. While the Senate ultimately adopted the broader insurance program adopted by the House, see note 2, *supra*, the problems addressed by the two proposals overlapped substantially.

[4] The NSLI program was before this Court in *Wissner* v. *Wissner*, 338 U.S. 655 (1950).

[5] Each primary insurer must, *inter alia*, be licensed to sell life insurance in each of the 50 states and the District of Columbia. 38 U.S.C. 766(a). The designated primary insurer or insurers

government is the policyholder, rather than the insurer, under the SGLI program. The Administrator has contracted with the Prudential Insurance Company of America, which serves as the primary insurer under the SGLIA, and which operates, under VA supervision, the Office of Servicemen's Group Life Insurance, located in Newark, New Jersey. See 38 U.S.C. 766(b).

Maximum coverage under the SGLI program was initially set at $10,000. 79 Stat. 881. Since the inception of the program, however, statutory changes have expanded the class of people eligible for SGLI coverage and the amount of coverage available. In 1970, the maximum amount of coverage was increased from $10,000 to $15,000 and part-time coverage was extended to all reservists, to members of the National Guard and to ROTC members while engaged in authorized training duty. Pub. L. No. 91-291, Sections 1 and 2, 84 Stat. 326-327. In 1972, cadets and midshipmen of the service academies were included for full-time coverage. Pub. L. No. 92-315, 86 Stat. 227. In 1974, the Veterans' Insurance Act, Pub. L. No. 93-289, 88 Stat. 165 *et seq.*, increased maximum coverage to $20,000 for all members (38 U.S.C. 767(a)) and extended full-time coverage to members of the Ready Reserves and Retired Reservists (38 U.S.C. 765(5)(B) and (C)). The 1974 Veterans' Insurance Act also established the Veterans' Group Life Insurance (VGLI) program in order to provide recently discharged service members the right to convert SGLI policies to a nonrenewable five-year term policy. Sections 5(a) and 9(a), 88 Stat. 166, 169. See 38 U.S.C. 768(b) and 777.

To ensure that the right to obtain insurance is not forfeited by oversight, the SGLI program is operated on a presumptive enrollment basis. That is, coverage is provided and premiums are withheld from servicemen's pay, unless and until coverage is expressly declined or termi-

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share the actuarial risk by reinsuring portions of the total liability with other participating insurers who meet criteria specified by the Administrator. 38 U.S.C. 766(c); see 38 C.F.R. 9.28.

nated in writing. 38 U.S.C. 767(a) and 769. The Veterans' Administration informs us that 99.6% of all active duty personnel and 97.9% of the Ready Reservists are enrolled in the program. In order to make life insurance available to service members through a commercial insurer at reasonable rates, notwithstanding the special mortality risks that service members often assume, Congress undertook to subsidize the premiums. A sum representing the extra premium for the special mortality risk incurred by service members is periodically deposited by the United States into a revolving fund established to pay the premiums on the master SGLI policy from appropriations for service pay. 38 U.S.C. 769(b) and (d)(1). The balance of the revolving fund is derived from deductions withheld from service members' pay. 38 U.S.C. 769(a)(1) and (d)(1).[6] Accordingly, depending upon the conditions faced by service members at any given point in time, a large share of the premiums paid may be derived from the federal budget, rather than service members' contributions. See, *e.g.*, S. Rep. No. 91-398, 91st Cong., 1st Sess. 2 (1969).

2. The SGLIA provides that insurance benefits under an SGLI policy "shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of * * * [the service member's] death" in a specified "order of precedence." 38 U.S.C. 770(a). Benefits are to be paid first "to * * * [such] beneficiary or beneficiaries as the member or former member may have designated by a writing" received at the appropriate office prior to the member's death. If the service member has not made a written designation, the benefits are to be paid to the member's "widow or widower"; if there are no beneficiaries under the first two categories the benefits are to be paid to the member's child or children. *Ibid.*

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[6] The Administrator is also authorized to draw upon the revolving fund to pay the administrative costs incurred by the VA in overseeing administration of the SGLIA. 38 U.S.C. 769(d)(2) and (3).

Proceeds payable to a beneficiary under 38 U.S.C. 770(a)] are expressly shielded from any type of judicial process. Pursuant to 38 U.S.C. 770(g), added to the SGLIA in 1970, Pub. L. No. 91-291, Section 5, 84 Stat. 331, payments of policy proceeds "shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure *by or under any legal or equitable process whatever*, either before *or after* receipt by the beneficiary" (emphasis added). Thus, by this statutory scheme, Congress has elected to honor any choice of beneficiary made by a service member by exercise of the proper procedures, and to secure to the beneficiary so designated, or determined under the statutory order of precedence, the exclusive right of enjoyment of the proceeds of a matured SGLI policy.

The VA has consistently construed the SGLI statute as mandating payment of policy proceeds to the beneficiary selected by the insured and properly registered under applicable procedures, notwithstanding any contrary terms of divorce settlements, decrees, or other documents. Thus, pursuant to his authority under 38 U.S.C. 210(c)(1) to "make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration and are consistent therewith," the Administrator has promulgated regulations providing, *inter alia*, that a "member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary," 38 C.F.R. 9.16(a), that "[a] change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary," 38 C.F.R. 9.16(e), and that "[n]o change or cancellation of beneficiary * * * in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office * * *." 38 C.F.R. 9.16(f).

B. The Present Proceedings

1. Richard Ridgway, a Sergeant in the United States Army, was the insured under a $20,000 SGLI policy issued by petitioner Prudential Insurance Company. Sgt. Ridgway's first marriage, to respondent April Ridgway, ended in divorce in December 1977. The divorce decree, which was entered following property settlement negotiations between Sgt. Ridgway and his wife,[7] ordered him "to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children" and to replace the policies with other insurance should any of them "be terminated for any reason" (Pet. App. 16, 28-29).[8]

In 1978, Ridgway married his second wife, petitioner Donna Ridgway. On April 3, 1978, contrary to the divorce decree, Sgt. Ridgway altered the designation of beneficiary governing his SGLI policy, directing that the proceeds be paid as specified "by law." This meant that the statutory order of precedence in 38 U.S.C. 770(a) was to be followed; under that provision, the policy proceeds would be paid to Sgt. Ridgway's widow, Donna Ridgway (Pet. App. 28).[9]

2. Following Sgt. Ridgway's death in 1979, both April and Donna Ridgway filed claims with Prudential for the proceeds of the SGLI policy. April Ridgway predicated

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[7] It is not entirely clear from the opinions of the Maine courts whether the property division negotiations culminated in an agreement, and if so, whether it was in written form, and whether any such agreement required Sgt. Ridgway to maintain his SGLI policy in effect for the benefit of his children (compare Pet. App. 16 and 32 with Pet. App. 28). For purposes of this brief we assume, as did the Supreme Judicial Court (*id.* at 16), that a separation agreement to this effect existed.

[8] Respondents Hayley, Laurie and Brady Ridgway are the children of April and Richard Ridgway.

[9] The SGLIA defines a widow for the purpose of 38 U.S.C. 770(a) to be "a person who is the lawful spouse of the insured member at the time of his death." 38 U.S.C. 765(7).

her claim on the divorce decree; Donna Ridgway claimed the proceeds on the basis of Sgt. Ridgway's policy designation and her status as his widow (Pet. App. 28). April Ridgway thereafter filed suit on behalf of her children against Prudential, in the Superior Court for Androscoggin County, Maine, seeking an injunction barring Prudential from paying the SGLI insurance proceeds to Donna Ridgway and a declaratory judgment that the proceeds belonged to her children. Donna Ridgway was joined as a party to the suit and was aligned as a plaintiff, asserting her claim to the insurance proceeds. April Ridgway then amended her complaint to designate her children as plaintiffs and herself as their legal representative. Finally, April Ridgway filed a cross-claim against Donna Ridgway, seeking imposition of a constructive trust on any SGLI insurance proceeds paid over to Donna Ridgway for the benefit of the children of April and Richard Ridgway (Pet. App. 17, 28-29).

The Superior Court rejected April Ridgway's claims, agreeing with Donna Ridgway and Prudential that the terms of the divorce decree directing Sgt. Ridgway to maintain his children as the beneficiaries designated to receive the SGLI insurance proceeds were inconsistent with the SGLIA and the VA regulations thereunder, which afford a policy holder complete freedom of choice in the designation or substitution of a beneficiary (Pet. App. 30-31). The court further held that imposition of a constructive trust upon the insurance proceeds once they reached the hands of the designated beneficiary would be equally impermissible under federal law (*id.* at 31-32). While denying all relief to April Ridgway in those proceedings and directing payment of the insurance benefits to Donna Ridgway, the Superior Court suggested that April Ridgway might have a separate viable cause of action for breach of contract against Sgt. Ridgway's estate, resting upon the property settlement agreement that underlay the divorce decree (*id.* at 32).

3. The Supreme Judicial Court of Maine reversed (Pet. App. 16-25), reaching only the propriety of imposing the constructive trust sought by April Ridgway (*id.* at 18). Based upon a single item in the legislative history of the SGLIA as originally enacted in 1965,[10] the court concluded (*id.* at 20-21) that the Act's sole objectives were:

> first, to make available to servicemen serving in a combat zone life insurance at standard rates and without war exclusion clauses; second, to make survivorship benefits available to non-dependent parents of deceased servicemen without the necessity that the parents meet a "needs" test; and third, to permit servicemen to provide survivorship protection for individuals such as brothers and sisters without any showing of dependency.

In the court's view (*id.* at 21), none of these objectives would be frustrated by the imposition of a constructive trust.

The Supreme Judicial Court also concluded the the anti-attachment provision of the SGLIA, 38 U.S.C. 770(g), was no obstacle to the imposition of a constructive trust upon the insurance proceeds. The court stated (Pet. App. 21) that the purpose of that provision "is to protect the proceeds of the insurance from the claims of creditors," adding that "[w]e are concerned here not with the claim of a creditor but with the claims of minor children who assert an equitable interest in the proceeds * * *." The court distinguished (*id.* at 21-24) this Court's decision in *Wissner* v. *Wissner*, 338 U.S. 655 (1950), proscribing application of state community property law to proceeds of a NSLI policy, by relying upon a suggestion in *Wissner* (338 U.S. at 659-660 & n.4) that cases involving alimony or support obligations might require a different result. Stressing that Sgt. Ridgway voluntarily assumed the obligation to designate his children as the benefici-

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[10] See note 14, *infra*.

aries of his SGLI policy, and that he violated the "valid decree[]" of a state court (Pet. App. 24), the Supreme Judicial Court concluded that Congress had not barred imposition of a constructive trust as a remedy in these circumstances, and it imposed such a trust in favor of the respondents.

SUMMARY OF ARGUMENT

There can be no dispute as to the power of Congress, acting under Article I, Section 8, of the Constitution, to legislate on the subject of insurance for members of the military and other uniformed services and to prescribe the terms upon which the proceeds of such insurance will be paid. Similarly, there can be no doubt that when Congress speaks in this area its mandate displaces any inconsistent provisions of state law, by operation of the Supremacy Clause (Article VI, cl. 2). Pursuant to this charter for federal supremacy, this Court has removed impediments to the exercise of rights and expectancies created under federal law governing Railroad Retirement Act pensions, *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979); United States Savings Bonds, *Free* v. *Bland*, 369 U.S. 663 (1962); homesteads on the public lands, *McCune* v. *Essig*, 199 U.S. 382 (1905); and military life insurance, *Wissner* v. *Wissner*, 338 U.S. 655 (1950). We rely on these cases for our submission that the decision below should be reversed.

The SGLIA and implementing regulations afford a service member complete freedom of choice in the designation of a beneficiary. 38 U.S.C. 770(a); 38 C.F.R. Part 9. Congress determined to accord this discretion deliberately. Congress further assured that the service member's wishes would be honored by barring assignment of any interest in the insurance proceeds, and by securing these proceeds, both before or after payment to the beneficiary, against assertion of any legal or equitable rights conflicting with that of the beneficiary. 38 U.S.C. 770(g). These provisions closely parallel pro-

visions of the NSLIA that, the Court held in *Wissner*, preclude diversion of NSLI proceeds. The decision of the Maine Supreme Judicial Court frustrates the will of Congress by depriving Sgt. Ridgway's widow and designated beneficiary, Donna Ridgway, of the beneficial enjoyment of the proceeds of his SGLI policy.

Contrary to the suggestions of the Maine court and respondents, the decision below cannot be harmonized with prior law. Even if an exception to the anti-assignment provision were to be recognized in cases of child support, the interest secured to respondents by the lower court would not fall within that exception. Moreover, the use of a constructive trust device does not avoid the congressional policy precluding interference with the designated beneficiary's enjoyment of the insurance proceeds. Finally, Sgt. Ridgway's apparent agreement to maintain his children as beneficiaries of his insurance does not control the result in this case. The SGLIA prescribes the exclusive means of designating or changing a beneficiary, and state law is not competent to lend effective validity to an instrument that does not comply with the terms of the federal statute and implementing regulations.

ARGUMENT

A VALID DESIGNATION OF A BENEFICIARY UNDER THE SERVICEMEN'S GROUP LIFE INSURANCE PROGRAM MAY NOT BE DISTURBED OR FRUSTRATED BY APPLICATION OF STATE LAW

This Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126 (1945). Accordingly, the decision of the Supreme Judicial Court of Maine is open to review only to the extent that it fails to honor rights and duties established by federal law. However, notwithstanding the limited purview of federal law in the field of domestic relations generally, see *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581

(1979), this Court has previously found it necessary to protect rights and expectancies established pursuant to federal law against the operation of state law governing the marital relation, to prevent the frustration of the congressional policy embodied in the federal rights. See *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 581-582; *Yiatchos* v. *Yiatchos,* 376 U.S. 306, 309 (1964); *Free* v. *Bland,* 369 U.S. 663 (1962); *Wissner* v. *Wissner,* 338 U.S. 655 (1950); *McCune* v. *Essig,* 199 U.S. 382 (1905). This case requires the Court to honor rights created by the Servicemen's Group Life Insurance Act.

Petitioners argue that a service member is entitled under the SGLIA and implementing regulations to designate whomever he wishes as beneficiary of the policy insuring his life, and that the service member is further entitled to expect that the designated beneficiary alone will receive the beneficial enjoyment of the proceeds of the policy. The Supreme Judicial Court of Maine concluded, however, that imposition of a constructive trust on the proceeds of an SGLI policy to enforce a state divorce decree would not interfere with federal policy. In the view of the Maine court, no federal policy requires "permitting a serviceman to evade the responsibility to provide for his minor children" (Pet. App. 21). Moreover, the court determined that the anti-attachment provision of the SGLIA, 38 U.S.C. 770(g), merely serves "to protect the proceeds of the insurance from the claims of creditors" (Pet. App. 21) and that the provision presents no barrier to "the claims of minor children who assert an equitable interest in the proceeds" of an SGLI policy (*ibid.*). We believe that the Maine court's conclusions are mistaken, because they fail to give effect to the literal commands of the SGLIA or to the congressional policy embodied therein.

A. State Law Governing Marital Obligations Must Yield To Applicable Federal Law

State divorce decrees, like other law governing the economic aspects of domestic relations, must give way to conflicting federal law, notwithstanding the importance to the state of the policies embodied in its own law. *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 581; *Free* v. *Bland, supra,* 369 U.S. at 666. That principle, which governs this case, is but the necessary consequence of the Supremacy Clause of the Constitution, Article VI, cl. 2. *Ibid.*

The application of federal law to displace inconsistent state domestic law is best illustrated in a line of cases in which federally created benefits and property rights were shielded from application of state community property law. In *Wissner* v. *Wissner, supra,* for example, an Army officer named his parents as beneficiaries of a National Service Life Insurance policy. Upon the serviceman's death, however, his widow sought to exercise community property rights in the insurance proceeds. The NSLIA provided that the insured "shall have the right to designate the beneficiary or beneficiaries of the insurance * * * and shall * * * at all times have the right to change the beneficiary or beneficiaries * * *." 338 U.S. at 658. The Act further provided that payments to the beneficiary would be "exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." *Id.* at 659. Despite these provisions, a California court held that the proceeds of the policy were community property and ordered that one-half of the proceeds be paid to the widow by the named beneficiaries. *Id.* at 658.

This Court reversed, noting that "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." 338 U.S. at 658. The Court added that "[w]hether directed at the very money received from the Government or an equiva-

lent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress." *Id.* at 659. The diversion of future payments to be received by the beneficiary directed by the state court was proscribed as a "seizure" prohibited by the anti-attachment provision of the Act. *Ibid.*

This mode of analysis is traceable at least to *McCune* v. *Essig*, *supra*, in which federal homestead laws providing a right of succession to a widow were held to bar acquisition of any interest in the homesteaded lands by a deceased homesteader's daughter. The Court recognized that this result was contrary to that dictated by state community property law, but stated: "The law of the State is not competent to do this." 199 U.S. at 389. The Court employed a similar analysis in *Free* v. *Bland*, *supra*, overturning a decision by the Supreme Court of Texas holding that Texas community property law took precedence over Treasury Department regulations creating a right of survivorship in United States Savings Bonds. 369 U.S. at 664-666. This Court observed that "[t]he clear purpose of the regulations is to confer the right of survivorship on the surviving co-owner. Thus, the survivorship provision is a federal law which must prevail if it conflicts with state law" (*id.* at 668; footnote omitted). See also *Yiatchos* v. *Yiatchos*, *supra*. Most recently, in *Hisquierdo* v. *Hisquierdo*, *supra*, the Court held that provisions of the Railroad Retirement Act, 45 U.S.C. 231 *et seq.*, that bar assignment or diversion of any interest therein by legal process, and terminate a spouse's eligibility for benefits upon divorce, preclude application of community property law to benefits paid under the Act.

In light of these precedents, the critical inquiry in this case is readily identified: Whether the diversion of the beneficial interest in the proceeds of Sgt. Ridgway's SGLI policy from his designated beneficiary, Donna Ridgway, to the use of his children conflicts with the provisions of the SGLIA and valid implementing regulations.

B. The Servicemen's Group Life Insurance Act Governs The Distribution Of The Proceeds Of Policies Issued Thereunder

1. The disposition in this case is controlled by *Wissner* v. *Wissner*, *supra*. Under the SGLIA, 38 U.S.C. 770(a), as under the earlier NSLIA, Section 602(g), 54 Stat. 1010, considered in *Wissner*, the insured service member possesses the right freely to designate his beneficiary and to alter his choice at any time by communicating that decision in writing to the proper office. See 338 U.S. at 658.[11] Thus, as under the NSLIA, "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." *Ibid.*[12] Nor

[11] Under the NSLIA, as originally adopted (Section 602(g), 54 Stat. 1010), the choice of beneficiary was generally limited to a class consisting of the decedent's spouse, children, parents and siblings. See 38 U.S.C. 716(b). Congress removed this restriction as to NSLI policies maturing after August 1, 1946. NSLIA of 1946, ch. 728, Section 5, 60 Stat. 782; see 38 U.S.C. 717(a). In *Wissner*, the Court considered the NSLIA as it stood prior to the 1946 amendments. 338 U.S. at 656 n.1, 658. The SGLIA follows the post-1946 NSLIA in allowing complete freedom-of-choice to the service member in designating his or her beneficiary. The congressional policy of honoring a service member's choice recognized in *Wissner* was thus enlarged and emphasized by the 1946 NSLIA amendments and the corresponding provision of the SGLIA, 38 U.S.C. 770(a).

[12] To be sure, the SGLIA differs from the NSLIA in that the latter expressly states that the right to designate a beneficiary is retained "at all times" and does not rest on the consent of the beneficiary. See Section 602(g), 54 Stat. 1010; 38 U.S.C. 717(a). But the SGLIA's unqualified directive to pay all proceeds to whatever "beneficiary or beneficiaries * * * the member * * * may have designated by a writing received [in the proper office] prior to death" (38 U.S.C. 770(a)), suggests that no different result was intended by Congress. Any ambiguity was eliminated by the regulations promulgated by the Administrator, pursuant to 38 U.S.C. 210(c)(1), providing that a "change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary" (38 C.F.R. 9.16(e)), and that "[n]o change or cancellation of beneficiary * * * in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office" (38 C.F.R. 9.16(f)). Neither respondents nor the court below have ever suggested that these

can there be any doubt that Congress recognized the breadth of the freedom of choice accorded to the service member under the SGLIA. The House Report states: "The serviceman may designate any person as a beneficiary." H.R. Rep. No. 1003, 89th Cong., 1st Sess. 7 (1965). This point was underscored during the legislative debate:

> This bill permits you to leave your insurance to your church, to your college, to your best friend. The beneficiary provision is wide open under this option.

111 Cong. Rec. 24341 (1965) (remarks of Rep. Everett).[13] The Maine court's cramped construction of the purposes of the SGLIA (Pet. App. 20-21) is accordingly inconsistent with both the language of the Act and its legislative history.[14]

Neither respondents nor the Maine Supreme Judicial Court have questioned Congress' authority to control pay-

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regulations are unreasonable, unauthorized or inconsistent with the SGLIA, nor would such a suggestion be supportable. See *Whirlpool Corp.* v. *Marshall*, 445 U.S. 1, 11-13 (1980); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).

[13] See note 11, *supra*. These remarks and the report cited addressed the House bill, H.R. 10873, 89th Cong., 1st Sess. (1965), which formed the basis for the SGLIA as enacted. See note 2, *supra*.

[14] In interpreting the purpose of the SGLIA, the Supreme Judicial Court relied (Pet. App. 20-21) entirely upon a statement by W. J. Driver, then Administrator of Veterans' Affairs, appended to H.R. Rep. No. 1003, *supra*, at 15-17. The statement cited, however, does not purport to comment specifically on the purpose of the freedom-of-choice-of-beneficiary provision, 38 U.S.C. 770(a). Plainly, it cannot be employed to read that provision out of the Act, as the Maine court did. This statement is, in any event, not a product of Congress itself. The language paraphrased by the Maine court is an especially poor indicator of congressional intent regarding Section 770(a), because rather than describing the provisions of the bill that became the SGLIA, it merely identifies some of the problems in the existing law addressed by both the House bill, H.R. 10873, *supra*, which became the SGLIA, and the far more limited Senate bill, S. 2127, *supra*, which contained no provision comparable to 38 U.S.C. 770(a). H.R. Rep. No. 1003, *supra*, at 16; see note 2, *supra*.

ment of the proceeds of SGLI policies. As the Court acknowledged in *Wissner* v. *Wissner*, *supra*, 338 U.S. at 660-661, this "end is a legitimate one within the congressional powers over national defense, and the means are adapted to the chosen end." The federal interest in controlling disposition of the entitlement created by the SGLIA is especially strong because a large share of the proceeds of an SGLI policy may be drawn from general tax revenues. See page 5, *supra;* compare *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 582; *Wissner* v. *Wissner*, 338 U.S. at 658.[15] The controlling provisions of the SGLIA accordingly must displace the inconsistent provisions of state law.[16]

2. a. Imposition of a constructive trust upon the insurance proceeds is also inconsistent with the anti-

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[15] The balance of the funds that support payment of benefits under a matured policy are deducted from a service member's pay. See page 5, *supra*. There is thus no opportunity for fraudulent manipulation of assets owned by a spouse to finance insurance premiums. Compare *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 582, with *Yiatchos* v. *Yiatchos*, *supra*, 376 U.S. at 309-310.

[16] In *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 590 n.24, the Court suggested that state law might not be so readily displaced where Congress is silent on the subject of distribution of a benefit, especially when the benefit program is a private one that federal law merely regulates. That caveat has no application here. The entire SGLI benefit program is a creation of Congress, and the United States is the insured thereunder. Congress and the Administrator have answered all relevant questions as to entitlement to benefits by defining the order of precedence. 38 U.S.C. 770(a). Congress also defined the term "widow" in the 1971 amendments to the SGLIA, Pub. L. No. 92-185, Section 1, 85 Stat. 642, 38 U.S.C. 765(7), as "a person who is the lawful spouse of the insured member at the time of his death," thereby removing any ground for questioning Donna Ridgway's right to receive the proceeds of Sgt. Ridgway's insurance under 38 U.S.C. 770(a). See page 7, *supra*. The 1971 amendment to the SGLIA was intended to ensure use of uniform federal definitions of the terms employed in the statutory order of precedence governing payment of SGLI proceeds. H.R. Rep. No. 92-629, 92d Cong., 1st Sess. 1-2 (1971); S. Rep. No. 92-545, 92d Cong., 1st Sess. 1-2 (1971)

attachment provision of the SGLIA, 38 U.S.C. 770(g). This Court invoked the anti-attachment provision of the NSLIA as an independent ground for the result in *Wissner* v. *Wissner, supra,* 338 U.S. at 659. The SGLIA provides, in language identical to that construed in *Wissner,* that payments to a beneficiary designated by the insured or determined by law

> shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

38 U.S.C. 770(g). The diversion of the equitable interest in the proceeds of Sgt. Ridgway's SGLI policy by means of the constructive trust fashioned by the Maine court is effectively a seizure of those proceeds, which Congress intended to prevent. *Wissner* v. *Wissner, supra,* 338 U.S. at 659.

When originally adopted, the SGLIA did not include a separate anti-attachment provision. See 79 Stat. 883-884. This provision was added by amendment in 1970. 84 Stat. 331. The amendment, proposed by the Veterans' Administration, was intended to still doubts as to whether the general anti-assignment provision covering VA benefits programs, 38 U.S.C. 3101, was applicable to the SGLI program. H.R. Rep. No. 91-1025, 91st Cong., 2d Sess. 17-18 (1970) (letter from Administrator of Veterans' Affairs).[17] The amendment was described in the House Report as identical to the anti-attachment provision applicable to NSLI. *Id.* at 5. Similarly, Senator Talmadge, the sponsor of the Senate version of the amendment, remarked: "The provision * * * closely parallels another provision of present law relating to National Servicemen's Life Insurance proceeds." 116

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[17] The present 38 U.S.C. 3101, which covers the NSLI program, was before the Court in *Wissner.* 338 U.S. at 659. However, unlike the NSLI program, payments are not made directly by the VA under the SGLI program. Accordingly, the applicability of the general anti-assignment provision was open to question. See H.R. Rep. No. 91-1025, *supra,* at 5, 17, 18; 116 Cong. Rec. 18723 (1970) (remarks of Sen. Talmadge).

Cong. Rec. 18723 (1970). The amendment to the SGLIA was enacted after this Court's *Wissner* decision. In these circumstances, it is reasonable to assume that Congress intended 38 U.S.C. 770(g) to be interpreted in the same fashion as its counterpart in the NSLIA. See *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978). Like the earlier provision, Section 770(g) gives effect to Congress' intention that the beneficiary identified pursuant to the SGLIA and the applicable regulations not be disturbed in his enjoyment of the policy proceeds.[18]

The Maine court attempted to limit the reach of Section 770(g), stating (Pet. App. 21) that "its purpose is to protect the proceeds of the insurance from the claims

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[18] The VA had always construed the anti-attachment provision of 38 U.S.C. 3101(a) and its forerunner as barring any claims against proceeds that would be inconsistent with the serviceman's designation of beneficiary, notwithstanding any contrary divorce decree or property settlement, and most decided cases under the NSLIA followed that rule. See, *e.g.*, *Bonner* v. *United States*, 222 F. Supp. 539 (D. Mass. 1963); *Eldin* v. *United States*, 157 F. Supp. 34 (S.D. Ill. 1957); *Heifner* v. *Soderstrom*, 134 F. Supp. 174 (N.D. Iowa 1955); Annot., 13 A.L.R. Fed. 6, 26 *et seq.* (1972 & 1980 Supp.) (collecting cases). In *Suydam* v. *United States*, 404 F.2d 1329 (D.C. Cir. 1968), the court of appeals agreed that the terms of a divorce decree could not overcome a valid designation of beneficiary under the NSLIA. The court suggested in dictum, however, that a constructive trust might be imposed upon the proceeds of the policy in the hands of the designated beneficiary, where a divorce decree incorporates a valid property settlement agreement purporting to freeze the designation of beneficiary under an NSLI policy. 404 F.2d at 1332. The court made no attempt to distinguish the authorities cited above and this Court's *Wissner* decision, which were cited by the court (*id.* at 1331) in rejecting the direct attack on the designation of beneficiary.

In *In re Marriage of Milhan*, 27 Cal. 3d 765, 777-778, 613 P.2d 812, 818-819, 166 Cal. Rptr. 533, 539-540 (1980), petition for cert. pending, No. 80-578 (filed Oct. 10, 1980), the California Supreme Court held, *inter alia*, that neither *Wissner* nor *Hisquierdo* bars an award to a spouse in divorce proceedings of property equivalent in amount to a community property share of the present value of a living veteran's NSLI policy. For the reasons stated in this brief we believe that the *Milhan* decision is unsound.

of creditors" and that it accordingly has no application to "the claims of minor children who assert an equitable interest." But this contention fails to give effect to the broad and unqualified sweep of Section 770(g), which, in addition to exempting policy proceeds from the claims of creditors, prohibits any "attachment, levy, or seizure," by or under "any legal or equitable process whatever," and whether accomplished "before or after receipt" of the insurance proceeds by the beneficiary. Under the reading adopted by the Maine court, the bulk of the statutory text is mere surplusage. Moreover, the Maine court resurrected an argument rejected by this Court in *Wissner* (compare 338 U.S. at 659 (opinion of the Court) with 338 U.S. at 662-664 (Minton, J., dissenting)) and more recently in *Hisquierdo* v. *Hisquierdo*, *supra* (compare 439 U.S. at 583-587 (opinion of the Court) with 439 U.S. at 598-600 (Stewart, J., dissenting)). The *Hisquierdo* Court declared without qualification (439 U.S. at 584; footnote omitted):

> Like anti-attachment provisions generally, see *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973); *Wissner* v. *Wissner*, *supra*, * * * [the Railroad Retirement Act] ensures that the benefits actually reach the beneficiary. It pre-empts all state law that stands in its way. It protects the benefits from legal process "[n]otwithstanding any other law . . . of any State." * * * It prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy.

b. The Maine court sought to distinguish *Wissner* by relying on language in the Court's opinion which it read to suggest that "a different result might obtain in cases involving alimony and/or support" (Pet. App. 22). But the Court in *Wissner* declined to express any view upon the merits of such a distinction. 338 U.S. at 660. In any event, even if an exception to the absolute statutory ban on diversion of benefits should be intro-

duced into the SGLIA in some class of cases involving alimony or support, this is not such a case, for the provisions of the Ridgway divorce decree directing Sgt. Ridgway to maintain his insurance in effect for the benefit of his children cannot be so characterized as a matter of federal law. These provisions of the divorce decree were not based on any finding of need for the insurance proceeds. Compare *Wissner* v. *Wissner*, *supra*, 338 U.S. at 660; *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 587 & n.20. Indeed, here the divorce decree was apparently based upon the terms of a property division agreement. But see note 7, *supra*. Moreover, the beneficiary of an SGLI policy has only a contingent right to receive a lump sum payment at an uncertain future date.[19] Sgt. Ridgway's obligation to maintain his SGLI insurance is to be contrasted in this respect with other obligations imposed upon him by the Ridgway divorce decree, including monthly support payments for each child, a quarterly clothing allowance, and provision for the cost of medical, dental and optical health care (J.A. 14). The insurance term of the divorce decree accordingly cannot fairly be described as entailing child support. Compare 42 U.S.C. (Supp. II) 622(b).[20]

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[19] Under the SGLIA, the insured service member may direct settlement in a lump sum or payment of proceeds in 36 monthly installments. If he or she elects the former, the beneficiary may override that choice upon maturation of the policy, in favor of the latter option. 38 U.S.C. 770(d).

[20] The cited definition of "child support" occurs in an amendment to the Social Security Act. It is applicable to a limited waiver of the anti-garnishment provisions that would otherwise apply, *inter alia*, to federal wages, Social Security and Railroad Retirement Act benefits. The amendment permits enforcement of alimony and child support obligations against such wages or benefits due from the United States to the person bound to pay such support. See 42 U.S.C. (Supp. II) 659(a). This provision applies only to "moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, sub-

3. The Maine court (Pet. App. 24) and respondent (Br. in Op. 3, 6) suggest that imposition of a constructive trust upon the insurance proceeds for the benefit of Sgt. Ridgway's children avoids any conflict with the terms and policies of the SGLIA, at least in circumstances where the service member entered a "voluntary agreement" to maintain his child as beneficiary. We disagree.[21] First, as demonstrated above (see pages 17-20, *supra*), the anti-attachment provisions of the SGLIA bar *any* form of diversion of the right to enjoy the insurance proceeds. Diversion by legal process is expressly barred both before and after receipt by the beneficiary. 38 U.S.C. 770(g). Second, reliance upon the constructive trust device rather than direct relief against the insurer would heighten the burden placed upon the designated

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division or instrumentality thereof)." *Ibid.* It is accordingly inapplicable to SGLI proceeds, which are not "based upon remuneration for employment," see 42 U.S.C. (Supp. II) 662(f), and which are the obligations of a private insurer to the United States, rather than obligations of the United States. See pages 3-4, *supra*.

In *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 587 & n.20, the Court noted that in the 1977 amendments to the Social Security Act, 42 U.S.C. (Supp. II) 659(a), 662, Congress had "written into law the same distinction *Wissner* drew as a matter of policy." The Court observed that Congress had defined alimony, 42 U.S.C. (Supp. II) 662(c), so as to exclude property divisions and community property distributions, inferring that Congress did not intend to allow Railroad Retirement Act benefits to be reached by assertion of community property rights. The definition of "child support" in the Social Security Act amendments, as "periodic payment of funds for the support and maintenance of a child," 42 U.S.C. (Supp. II) 662(b), is similarly instructive here. The Maine divorce court's direction that Sgt. Ridgway maintain his life insurance for the benefit of his children simply is not recognizable as child support within the meaning of this cognate authority.

[21] The only other court to consider the imposition of a constructive trust on SGLI proceeds refused such relief. *Weymann* v. *Wilson*, 320 F. Supp. 980, 989 (M.D. Fla. 1970). But cf. *Suydam* v. *United States*, *supra*, 404 F.2d at 1332 (dictum concerning NSLIA; see note 18, *supra*).

beneficiary to defend his or her right to receive the insurance proceeds, contrary to the policy of the SGLIA.[22] The legislative history of the SGLIA reveals that Congress believed that providing a secure financial resource to those dependent upon a service member was a benefit of great importance to those obliged to serve in combat. 111 Cong. Rec. 24340 (1965) (remarks of Reps. Ellsworth and Shriver). As explained earlier, service members were deliberately given unlimited freedom to designate their beneficiaries. It would hardly comport with these congressional choices to open the door to litigation against the designated beneficiary. *Wissner* v. *Wissner*, *supra*, 338 U.S. at 660.

Nor can the imposition of a constructive trust be rationalized on the ground that the decedent agreed to maintain his children as his beneficiary. *Stratton* v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119, 1121 (S.D. Iowa 1976); *Weymann* v. *Wilson*, 320 F. Supp. 980, 989 (M.D. Fla. 1970); see also note 18, *supra*. The SGLIA and implementing regulations give service members the right to change their minds, from time to time, as to who should receive insurance pro-

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[22] Respondents seemingly concede (Br. in Op. 2, 8), as did the Maine court (Pet. App. 24), that direct relief against the insurer is barred by the SGLIA. The few reported cases in point are in accord with this concession. See *Stratton* v. *Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 (S.D. Iowa 1976); cf. *Weymann* v. *Wilson*, *supra*. Respondents' concession, and their statement that

> [n]either respondents nor the Maine Supreme Court have suggested that Prudential could not safely pay the beneficiary designated by the deceased serviceman as indicated by the forms in its possession and thus fully discharge its liability under the policy

(Br. in Op. 8) is difficult to square with the fact that this action was commenced by respondents against Prudential as the sole defendant, to restrain payment by Prudential to petitioner Donna Ridgway.

ceeds.[23] The Maine court effectively frustrated Sgt. Ridgway's exercise of that right. Moreover, the SGLIA stipulates the proper procedure for changing a designation of beneficiary. 38 U.S.C. 770(a). A valid designation must be written, and must be received by the service in which a decedent served, prior to death. *Ibid.*; *Ross* v. *United States*, 444 F.2d 568, 572 (Ct. Cl. 1971); *Stratton* v. *Servicemen's Group Life Insurance Co.*, *supra*, 422 F. Supp at 1121-1122; *Weymann* v. *Wilson*, *supra*, 320 F. Supp. at 987-989; *Stribling* v. *United States*, 293 F. Supp. 1293, 1298-1300 (E.D. Ark. 1968). These conditions were not fulfilled by the divorce decree entered against Sgt. Ridgway or by any separation agreement he may have signed. Imposition of a constructive trust is thus a transparent attempt to give effect as a designation of beneficiary to a transaction that does not meet the statutory standard.[24]

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[23] Reliance on the contrary terms of a separation agreement would accordingly be unfounded. See *Wissner* v. *Wissner*, *supra*, 338 U.S. at 661.

[24] *Stratton* v. *Servicemen's Group Life Insurance Co.*, *supra*, 422 F. Supp. at 1122, and *Weymann* v. *Wilson*, *supra*, 320 F. Supp. at 989, suggest in dictum that persons claiming under divorce decrees that embody property settlement agreements may have viable suits against the estates of deceased service members for breach of contract. That question is not presented here, because the Maine court impressed with a trust the very proceeds that Prudential was to pay Donna Ridgway under Sgt. Ridgway's SGLI policy. While we take no position on the question whether a suit against an estate is permissible, we note that both *Wissner* (338 U.S.C. at 659) and *Hisquierdo* (439 U.S. at 588-589) preclude award of "offsetting" or "equivalent" sums. However, neither addressed the possibility of an action against a decedent's estate. Such an action would not necessarily affect the designated beneficiary, who might not be an heir, and need not directly embroil the beneficiary in litigation. Courts construing the NSLIA have divided on the question whether a contract remedy against a decedent's estate is barred by the federal statutory scheme. Compare, *e.g.*, *McJunkin* v. *Estate of McJunkin*, 493 S.W. 2d 278 (Tex. Civ. App. 1973), with *Will of Hilton*, 88 Misc. 2d 760, 388 N.Y.S. 2d 985 (Surr. Ct. 1976).

If a constructive trust may be imposed in this case as a consequence of an agreement between Sgt. Ridgway and April Ridgway, the anti-assignment provisions of the SGLIA could be readily circumvented. For instance, effect could then be given to an agreement to designate a commercial creditor as a beneficiary. Yet, 38 U.S.C. 770(g) plainly renders such an agreement unenforceable, if it means anything at all, notwithstanding the fact that an actual designation of a creditor as beneficiary would apparently be valid. See page 16, *supra*. No different result is required here. In sum, the SGLIA provides absolute freedom of choice of beneficiary to the participating service member, but allows recognition only of those choices expressed by the service member in writing and directed to the proper office.

CONCLUSION

The judgment of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted.

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No. 80-1070

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

ON WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF MAINE

PETITIONERS' REPLY AND SUPPLEMENTAL BRIEF

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September 24, 1981

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Note: The Court's attention is directed to the statement of subsidiaries (except wholly-owned subsidiaries) of The Prudential Insurance Company of America which was filed with the Court on July 13, 1981, and which remains unchanged.

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This Reply and Supplemental brief has three purposes: to address certain points raised in the Respondent's brief, to consider this Court's decision in *McCarty v. McCarty*, _____ U. S. _____, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981), decided after Petitioners' brief was filed, and to report still further new filings of cases similar to this action.

I. REPLY TO SELECTED POINTS IN RESPONDENT'S BRIEF

A. Fraudulent Use of Community Property

The Respondent's brief cites the cases of *Free v. Bland*, 369 U.S. 663 (1964), and *Yiatchos v. Yiatchos*, 376 U.S. 306 (1964), as support for an allegation of constructive fraud against the late Sergeant Ridgway. Respondent's brief, p. 17. His conduct in naming an SGLI beneficiary other than those ordered by the Court is analogized to the fraudulent act of Mr. Yiatchos in willing the entire interest in U.S. Savings Bonds to his brother, thus ignoring his widow's community property interest in them under Washington state law.

This argument misconceives a fundamental distinction between the SGLI insurance rights asserted in this action and the community property concepts at issue in *Yiatchos, Free v. Bland,* and *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979). Federal law and regulations create an absolute right in the insured serviceman to control his SGLI beneficiary, which is personal to him alone. It is, in the words this Court recently used to describe military retirement pay, a "personal entitlement," not a shared asset subject to the interest of another under community property concepts. *McCarty v. McCarty*, _____ U.S. _____ (1981). The miscreant Mr. Yiatchos intentionally misdirected property in which his wife had a vested interest. No one other than Richard Ridgway had the power to create interests in his SGLI insurance, and any interests so created were extant only until his next subsequent valid beneficiary designation was properly received by the military. While Richard or his estate might be subject to a civil claim for misdirecting the proceeds, he could not be said to have committed fraud based on the community property theories advanced in April's brief.

B. Spendthrift Exemptions

April argues that she is not a "creditor" within the meaning of 38 U.S.C. § 770(g) and her remedies are thus not blocked by the exemptions provided by that section. Respondent's brief, pp. 19-24. Petitioners wish to re-emphasize the point made in their principal brief, but evidently missed by the Respondent: it makes no difference under § 770(g) whether April is technically a "creditor" or not. The statute bars all legal action against all parties.

While no reported cases have been decided solely on the basis of 38 U.S.C. § 770(g), Petitioners had earlier asserted that cases decided under the NSLI analogue (38 U.S.C. § 3101(a)) uniformly held that § 3101(a) would bar a claim for policy proceeds which was contrary to the serviceman's intent, even when such a claim was based on an alimony or support decree. See Petitioners' brief pp. 13, 29. A substantial body of authority drawn from decisions of federal courts of appeal and state courts of final jurisdiction was cited. The Respondent's brief makes a bald assertion to the contrary, claiming that the predecessor to § 770(g) had been interpreted "a number of times in the context of attempts to enforce the claims of dependents for support out of veterans' benefits." Respondent's brief, p. 19.

Only an old decision of a lower state court has been cited supporting Respondent's position on this point. *Gaskins v. Security-First Nat. Bank*, 30 Cal. App. 2d 409, 86 P. 2d 681 (Dist. Ct. of App. 1939). The argument is otherwise devoid of citations to cases involving military life insurance. Further, it is simply not true that by 1970 "judicial construction of the existing analogues of 38 U.S.C. § 770(g) had crystallized an exception for financial obligations arising out of the family relationship," as alleged on page 21 of Respondent's brief. Petitioners' brief amply substantiates the opposite. Petitioners' brief, pp. 13, 19, 20, 26.

C. The "By Law" Beneficiary Designation

The Respondent's brief suggests, in both the text and footnote on page 12, that Richard Ridgway's "by law" beneficiary designation was equivalent to abandonment of his right to elect his beneficiary, and to acceptance of the order of beneficiary precedence prescribed by statute. The argument is advanced that this

form of designation is somehow unclear, although admittedly legal. The footnote further speculates that Sergeant Ridgway may have believed others would receive the insurance proceeds. *Id.*, n.2.

Both suggestions are fanciful and unsupported by logic or anything in the record. Contrary to April's assertion that the "by law" designation constituted an uninformed default of Sergeant Ridgway's statutory right of choice, the beneficiary designation form requires reference to its second page for a listing of the order of payment precedence which a "by law" designation will create. R., Donna's Trial Exhibit 2. An affirmative, conscious act by the electing serviceman is thus necessary to effect such a designation. It is simply illogical to suggest that anyone would deliberately ignore the cross reference to the second page and enter "by law," while remaining intentionally ignorant of the significance of the words. The order of precedence is clearly stated on the second page and it is equally certain that no one who read it could believe that his children would receive the money if the serviceman were married when the designation became operative.

D. Unjust Enrichment

Respondent alleges that Donna "would obviously be unjustly enriched if she received the proceeds of her husband's insurance policy." Respondent's brief, p. 7. April argues that Petitioners have never denied that Donna would be unjustly enriched (*id.*, p.5), and somewhat wishfully suggests that Petitioners have apparently conceded the issue. *Id.*, p. 24.

Such statements are totally without basis. Throughout the course of this litigation, both in this Court and the courts below, Donna and Prudential have both asserted Donna's absolute right to the proceeds of Sergeant Ridgway's SGLI policy, without encumbrance. *E.g.*, Petitioners' brief, pp. 27, 33. Donna was Richard Ridgway's wife when he died. He had specifically made a conscious decision to designate her as his SGLI beneficiary during their marriage. She has done nothing wrong. She has properly completed the necessary claim for benefits (R., Donna's Trial Exhibit 3), and is entitled to an unrestricted award of the insurance proceeds. She will in no way be unjustly enriched by receipt of the policy benefits.

E. Statutory Language Changes

Petitioners had advanced the position that the serviceman's right to make totally unrestrained beneficiary designations was more vigorously protected, if possible, under the SGLI program than under the predecessor NSLI statute. Petitioners' brief, p. 10. April urges that because two phrases which appeared in 38 U.S.C. § 717(a) are not present in the current § 770(a), Congress is currently less supportive of servicemen's freedom of designation than had been the case under the previous statute. Respondent's brief, n.3.

In fact, several phrases which had appeared in the earlier statute have been incorporated into comprehensive regulations under the SGLIA which were non-existent under the NSLIA. See generally Petitioners' brief, pp. 36-40. Taken in conjunction with the SGLI statute, the protection afforded the serviceman's right of beneficiary designation under the present law is even more detailed and complete than under NSLI.

F. The Stipulation Regarding Property Settlement Negotiations

In footnote 1 to April's brief Petitioners are taken to task for not referring in their brief to a stipulation in the trial court regarding prior property settlement negotiations. (A. 33). The omission was intentional, due to the uncertain status of the stipulation in the case, although Prudential and Donna believe that it is not material to the result here whether the matter stated in the stipulation was admitted into evidence or not.[1]

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[1]Although agreeing to the truth of the facts stated, Prudential and Donna reserved the right to object to introduction of the stipulation into evidence. At trial, the stipulation was received by the court *de bene*, without a ruling on its admissibility. The superior court's written Decision and Order perpetuated its tentative trial position by stating that it was "stipulated (unless barred by the parol evidence rule) that prior to the divorce, extensive negotiations regarding a property settlement were carried on." (A. 38). Nowhere did the court's Decision and Order decide the issue on which judgment was thus reserved.

In the course of April's appeal to the Maine supreme court a further stipulation was entered into by all parties that the superior court's findings of fact were correct and unchallenged. (A. 48). Since the admissibility of those facts contained in the first stipulation had not specifically been ruled upon by the superior court, presumably this matter did not come within the scope of the later stipulation, as the content of the first stipulation had not been "found" as a fact.

G. Policy Considerations

In the Petitioners' brief Prudential and Donna argued that very substantial administrative problems and costs would ensue if the group insurance carrier were forced to investigate each benefit claim to determine whether the insured serviceman was subject to any kind of court order directing payment to one other than the beneficiary designated to receive his SGLI benefits. April dismisses these contentions lightly, suggesting that few cases similar to Ridgway will arise, and that any time a competing claim for benefits results in litigation naming the insurance carrier, it can simply interplead the claimants and pay the proceeds into court.

This casual response misconceives the scope and gravity of the problem. The Petitioners' main brief identified several similar pending lawsuits in both state and federal courts, all of which had arisen during the time that this action has been in litigation. Since that principal brief was filed on May 23, 1981, additional controversies have arisen. See Part III of this brief, *post*. The potential for a large volume of such litigation is substantial, with attendant expenses in each such case a certainty.

Perhaps even more important is the damage which would be done to the credibility of the SGLI program as an inducement to military service, and to the good will of both the military and the insurer if the statutory and regulatory language is not to be given the obvious meaning of the words. The certainty of litigation if the insurer intentionally pays or states its intention to pay the designated beneficiary rather than the divorce-based claimant has been discussed in the Petitioners' brief at pp. 28 and 30-32. Should the insurer pay the designated beneficiary before becoming aware of a competing claim, a suit to recover the funds from the designee would follow with equal certainty, if the result decreed by the Maine court were to become the law. Whether the insurer were named as a defendant in such actions or not, continuing doubt over the reliability of beneficiary designations and payments

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Although the point was thus apparently unresolved, the state supreme court stated the negotiation stipulation as an admitted fact in the second paragraph of its decision. (A. 51). Because they were uncertain of its status, the Petitioners chose not to refer to the stipulation in the Statement of Facts in their principal brief in this Court. They continue to believe that the stipulation was never admitted into evidence.

would impair the credibility of both the insurer and the military, ultimately weakening the integrity and value of the entire SGLI program.

April further asserts that a ruling from this Court confirming the designated beneficiary's absolute right to the insurance proceeds would create uncertainty because divorce counsel would be unaware of the state of the law. Such an argument collapses upon itself. This Court's clear order, upholding not only the correctness of the insurer's action in paying the properly designated beneficiary but the beneficiary's absolute right to retain the proceeds, would provide a certain rule for all divorce counsel in the country. It would be up to counsel to recognize that SGLI insurance proceeds are, *a priori*, not to be considered as a component of divorce litigation or negotiation.

II. MCCARTY V. MCCARTY

On June 26, 1981, about a month after the Petitioner's brief was filed, this Court decided *McCarty v. McCarty*, _____ U. S. _____ (1981). In that case the Court reversed a decision of the Court of Appeal of California for the First Appellate District, and held that California's community property law did conflict in a material way with "clear and substantial federal interests" in federal military employee benefits. *Id.*, at _____. It thus rejected the claim of the divorcing wife of a military physician that she was entitled to an equal community property interest in her spouse's military retirement pension.

The Court's analysis of the parties' competing claims in *McCarty* is undertaken totally in the context of community property law, and the result is not surprising in view of *Wissner v. Wissner*, 338 U.S. 655 (1950), and *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979). Nonetheless, the opinion contains a number of holdings and observations which are highly relevant to this action.

First, while recognizing that its decision to deny the wife's claim might well cause hardship to ex-spouses of military personnel, this Court emphasized the unique and preferred status to be accorded military benefits established by Congress. In referring to the draft registration case, *Rostker v. Goldberg*, _____ U. S. _____ (1981), decided the same week, the Court pointedly stated, "We very recently have re-emphasized that in *no area* has the

Court accorded Congress greater deference than in the conduct and control of military affairs." *Id.*, at _____. (emphasis supplied).

The *McCarty* Court also restated a theme originally expressed in *Wissner*, noting that retirement pay "is one of the inducements selected to make military service attractive." *Id.*, at _____. *See also Wissner*, 338 U.S. at 661. The Court in *McCarty* went on to find that the state community property law constituted a direct interference with federal military power. The Court's statement with respect to retirement pay as an inducement to military service applies with equal force to military life insurance, and suggests most strongly that Congress' clearly worded protection for SGLI beneficiaries and proceeds (38 U.S.C. §770(g)) must be honored.

A second relevant feature of the *McCarty* case is its application of the federal pre-emption test enunciated in *Hisquierdo* to the realm of federal military programs. Citing *Hisquierdo*, the Court observed in *McCarty* that in the area of domestic relations, "[s]tate family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden." *Id.*, at _____, *citing Hisquierdo*, 439 U.S. at 581, with further citations noted therein.

The dissent in *McCarty* took issue with the Court for not quoting the exact language of the *Hisquierdo* pre-emption test, which it stated to comprise "a determination whether Congress has 'positively required by direct enactment' that state law be pre-empted." *Hisquierdo*, 439 U.S. at 581, *citing Wetmore v. Markoe*, 196 U. S. 68 (1904).

Although differing slightly on phraseology, the majority and dissenting opinions in *McCarty* are in essential agreement on the pre-emption standard to be applied. They parted company, however, over the question of whether the state-based community property rights asserted by Mrs. McCarty had been negated by affirmative, directly enacted federal law. It is extremely interesting to note that in presenting a model illustration of a federal statute which meets the tests of a directly enacted positive federal law to which state action does major damage, both opinions cited the beneficiary designation provisions of the National Service Life Insurance Act involved in *Wissner v. Wissner, supra*, _____ U. S. at _____, _____. Thus, *McCarty* emphas-

izes that the general rule of federal pre-emption is exemplified by the beneficiary designation provisions of NSLIA, which state Congress' intent with "force and clarity." Of course, those statutory sections are virtually identical to the ones at issue here.

Another characteristic of the *McCarty* decision directly germane to the issues here is the concept of certain military benefits as "personal entitlements" to the insured serviceman, not subject to the claims of any other interests. The Court took an expansive view of the term "personal entitlement," citing the NSLIA as an analagous statutory scheme standing for the strictly individual rights of the insured serviceman in his policy, and thus his absolute right to control its proceeds. _____ U.S. at _____. This right has been sufficiently contrasted with community property interests in an earlier section of this brief. *ante*, p. 1.

III. NEW CASES PRESENTING SIMILAR ISSUES

In the period since Petitioners' brief was filed, two new cases have come to Prudential's attention which present SGLI issues similar to those in this litigation. These cases are in addition to those previously identified in Petitioners' brief.

In the first of these, the widow of a deceased serviceman claims the proceeds of the insured's SGLI policy with respect to which the "by law" form of beneficiary designation was employed. A claim has also been filed on behalf of the minor child of the serviceman's prior marriage, premised on a divorce judgment which had ordered the decedent to maintain the minor child as sole beneficiary of any life insurance policies he might have in connection with his employment. At the time of the divorce judgment the decedent was not in the military and was covered by a private life insurance policy at his place of employment. He subsequently entered the military and obtained SGLI coverage.

Procedural matters have delayed commencement of suit, which has not been filed as of this date. Its filing in the U. S. District Court for the Eastern District of Michigan, Southern Division, is imminent.

In *McPherson et al. v. Bowles et al.*, now pending in the Circuit Court of the State of Oregon for the County of Multnomah under Docket No. A18103-01578, the serviceman's widow is a "by law" beneficiary. His ex-wife has sued the widow and Prudential on behalf of the serviceman's children, claiming that the policy pro-

ceeds should be awarded to her and the children in satisfaction of the decedent's alleged support arrearage obligation to the plaintiff's children. In that action, the claim is a general one against the policy as an available asset of the decedent, since the divorce judgment had not required that the SGLI policy be maintained with the children as beneficiaries.

These new cases illustrate additional factual variations on which claims to SGLI proceeds are continuously being litigated in the current unsettled state of the law.

IV. CONCLUSION

Petitioners renew their prayer that the decision of the Maine Supreme Judicial Court be reversed, and that this Court's order issue directing payment of the policy proceeds to Donna Ridgway. Petitioners urge that such payment be final and not subject to a constructive trust or any other encumbrance.

Respectfully submitted,

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